IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): William H. Barber, et al.	Group Art No.: 3627
Serial No.: 09/903,444	Examiner: Asfand M. Sheikh
Filed: July 9, 2001	Confirmation No. 9729
For: System and Kiosk for Commerce of Optical Media through Multiple Locations	

1 September 2009

MAIL STOP Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPLICANT-APPELLANT'S THIRD APPEAL BRIEF

Dear Sir:

In accord with 37 C.F.R. 41.37, and fully responsive to the non-final office action of April 1, 2009, the non-final office action of January 8, 2008, and the non-final office action of September 18, 2008, Appellants hereby file their Third Appeal Brief in support of their Appeal in the above-identified matter (hereinafter, the "present Application"). A first Notice of Appeal was originally submitted April 8, 2008, and a first Appeal Brief was timely filed June 9, 2008. Without submitting an Examiner's Answer, prosecution was reopened by the Examiner, and a Second Appeal Brief was submitted with a Second Notice of Appeal on December 18, 2008. Prosecution was again reopened by the Examiner without any submission of an Examiner's Answer. A Third Notice of Appeal was therefore timely submitted July 1, 2009. This Third Appeal Brief is submitted within two months of the Third Notice of Appeal, and is thus timely filed under 37 C.F.R. 41.37.

Appellants have already paid the fee for the Notice of Appeal on April 8, 2008, and the fee for the Appeal Brief on June 9, 2008. Appellants paid for a $30.00 total increase in fees with the Second Appeal Brief of December 18, 2008. Appeal fees have not increased since the December 18, 2008 payment. Accordingly, no fees are believed due. However, if any fee is deemed necessary to make this Third Appeal Brief or the July 1, 2009 Third Notice of Appeal both timely and complete, please charge Deposit Account No. 12-0600.

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REAL PARTY IN INTEREST

The real party of interest is DVDPlay, Inc. (formerly, FreeFlyr, Inc.), a Delaware corporation, having a principal place of business at 750 University Avenue, Suite 280, Los Gatos, California, U.S.A. The full right, title, and interests in this Application are accorded to DVDPlay, Inc., as illustrated by one or more fully-executed assignments, executed on July 9, 2001, and recorded on January 21, 2005, as found at reel/frame 015589/0542.

RELATED APPEALS AND INTERFERENCES

On February 19, 2008 and April 18, 2008, Appellants filed a Notice of Appeal and an Appeal Brief, respectively, in related U.S. Serial No. 09/578,631, which is the parent case of the present Application. Without having filed an Examiner's Answer in the parent case, the same Examiner issued a Notice of Allowance on August 8, 2008, and the parent case issued as U.S. Patent No. 7,444,296 on October 28, 2008. Some of the same issues appealed below were appealed in the parent case. No other appeals or interferences are currently known to Appellants that will directly affect, be directly affected by, or have a bearing on the decision to be rendered by the Board of Patent Appeals and Interferences in the present appeal.

STATUS OF CLAIMS

Claims 1, 3-7, 9-21, 23-41, 63-68, and 70-71 are pending in the present Application, with claims 1 and 63 being independent. All of these claims stand rejected on one or more of eleven stated grounds.

Claims 2, 8, 22, 42-62, 69, and 72-73 were previously cancelled.

Claims 1, 3, 9, 12, 18, 24-25, 27, 29, 31, 33-36, 38-40, 63-64, 66-67, and 70 were amended during prosecution.

Claims 4-7, 10-11, 13-17, 19-21, 23, 26, 28, 30, 32, 37, 41, 65, 68, and 71 are original (without claim amendment during prosecution).

The rejections of claims 1, 3-7, 9-21, 23-41, 63-68, and 70-71 are being appealed herein.

STATUS OF AMENDMENTS

An amendment, responsive to a non-final Office Action mailed October 6, 2004, was filed and entered January 21, 2005.

An Amendment, responsive to a non-final Office Action mailed April 26, 2005, was filed and entered June 24, 2005.

An Amendment, responsive to a Restriction Requirement mailed August 6, 2003, was filed and entered October 4, 2005.

An Amendment, responsive to a non-final Office Action mailed December 29, 2005, was filed and entered February 15, 2006.

An Amendment, responsive to a final Office Action mailed May 2, 2006, was filed June 30, 2006, but not entered on that date. The June 30, 2006 Amendment was entered July 20, 2006 with the filing of a Request for Continued Examination.

An Amendment, responsive to a non-final Office Action mailed September 27, 2006, was filed and entered November 10, 2006.

A Response without amendments, responsive to a final Office Action mailed February 9, 2007, was filed and entered March 16, 2007.

An Amendment, responsive to a final Office Action mailed May 3, 2007, was filed and entered October 31, 2007 with the filing of a Request for Continued Examination and a 37 C.F.R. 1.132 Declaration evidencing secondary considerations of nonobviousness, in the form of commercial success of the DVDPlay systems. The Rule 132 Declaration specifically detailed commercial success resulting from the features of independent claims 1 and 63.

A first Appeal Brief, responsive to a non-final Office Action mailed January 8, 2008, was filed June 9, 2008, subsequent to a Notice of Appeal filed April 8, 2008. No amendments were submitted in the first Appeal Brief, or left un-entered from a previous Amendment.

A second Appeal Brief, responsive to a non-final Office Action mailed September 18, 2008, was filed December 18, 2008, long with a second Notice of Appeal. No amendments were submitted in the Second Appeal Brief, or left un-entered from a previous Amendment.

SUMMARY OF CLAIMED SUBJECT MATTER

A. Independent Claim 1, and Dependent Claims 3-7, 9-21, and 23-*41*

Claims 1-14, 18-21, 23-42, 84, and 86 relate to a method for distributing optical recorded media (e.g., media 214, FIG. 2) to and from users.

With respect to claim 1, a method includes coupling one or more kiosks (e.g., kiosk 101, FIG. 1; kiosk 200, FIG. 2) to a central server (e.g., server 103, FIG. 1) via the Internet

(e.g., Internet 104, FIG. 1), each of the kiosks containing a plurality of recorded media (e.g., disks 102, FIG. 1). Inventory of the optical recorded media of each of the kiosks is determined, at the server. (See, e.g., present Specification, p. 14, lines 7-8). Operational status of each of the kiosks is routinely obtained at the server. (See, e.g., present Specification, p. 14, lines 13-15). A first user automatically interfaces via a touch screen (e.g., touch screen display 904, FIG. 8) at a first kiosk (e.g., kiosk 101 or 200, FIG. 1 or 2) in a first transaction for first local optical recorded media (e.g., media 214, FIG. 2). The touch screen provides a touch-selectable listing of optical recorded media, including the first local optical recorded media, contained within the first kiosk. (See, e.g., present Specification, p. 10, lines 27- 32). The first kiosk is one of the kiosks, and the first user is one of the users. Automatic communication is made between the first kiosk and the server to authorize the first transaction. (See, e.g., present Specification, p. 15, line 33 – p. 16, line 9; see also steps 502-512, FIG. 5). The first local optical media is dispensed from the first kiosk to the first user if the first transaction is approved. (See, e.g., present Specification, p. 16, lines 9-13; see also step 514, FIG. 5). Return of the first local optical media is accepted into rentable inventory of a second kiosk, the second kiosk being another one of the kiosks. (See, e.g., present Specification p. 5, lines 7-11; p. 21, lines 22-28).

With respect to claim 3, a digital image of a first code (e.g., group code 701A, FIG. 7) is captured on the first optical media and the image is scanned to determine a group identifier, the group identifier indicating which of the kiosks the first optical media may be returned to. The first optical media is accepted into rentable inventory of the second kiosk when the second kiosk is associated with the group identifier. (See present Specification, p. 21, lines 22-28).

With respect to claim 4, the image is rotated, via internal software to the first kiosk, and the first code is rescanned to determine the group identifier. (See present Specification, p. 5, lines 19-22; p. 16, lines 21-23; p. 21, lines 22-24).

With respect to claim 5, a second code is captured (e.g., code 701B, FIG. 7) on the first optical media and the image is scanned to determine a disk identifier, the disk identifier uniquely identifying the first optical media. Inventory of the first optical media is reported to the central server if the first optical media is accepted at the second kiosk. (See present Specification, p. 21, lines 29-31; see also p. 21, line 32-p. 22, line 3).

With respect to claim 6, the image is rotated, via internal software to the first kiosk, and the second code is rescanned to determine the disk identifier. (See present Specification, p. 5, lines 19-22; p. 16, lines 21-23; p. 21, lines 22-24).

With respect to claim 7, one or both of the first code and second code comprises a bar code (e.g., barcode 701, FIG. 7). (See also present Specification, p. 21, lines 22-31).

With respect to claim 9, characteristics of a case housing of the first optical media are sensed, then it is determined if the characteristics match predetermined characteristics associated with the second kiosk, and a door is opened to an input/output slot of the second kiosk to accept the case and optical media when the characteristics match the predetermined characteristics. (See present Specification, p. 4, line 30 - p. 5, line 4).

With respect to claim 10, the predetermined characteristics (see claim 9 description) are defined by physical structure of the case. (See present Specification, p. 4, line 30 - p. 5, line 4).

With respect to claim 11, the physical structure forms one or more holes and one or more blocked regions in the case, and the step of sensing characteristics comprises sensing the holes and blocked regions. (See present Specification, p. 4, line 34 - p. 5, line 1).

With respect to claim 12, inventory movement of the first optical media is tracked between the first kiosk and the second kiosk. (See, e.g., present Specification, p. 4, line 30-p. 5, line 26 and p. 21, lines 25-31).

With respect to claim 13, one or more images are obtained and stored through an image capturing device (e.g., camera device 210) located within, or in proximity to, the first kiosk. (See present Specification, p. 13, lines 29-34).

With respect to claim 14, a person proximal to the first kiosk is imaged. (See present Specification, p. 13, lines 29-31).

With respect to claim 15, a person interacting with the first kiosk is imaged. (See present Specification, p. 13, lines 31-32).

With respect to claim 16, a person conducting a user identification or credit card input at the first kiosk is imaged. (See present Specification, p. 4, line 30 - p. 5, line 4).

With respect to claim 17, the images are transmitted to the central server. (See present Specification, p. 4, lines 33-34).

With respect to claim 18, a second user automatically interfaces at a second kiosk in a second transaction for a second local optical recorded media. The second local optical media

is contained within the second kiosk, the second kiosk being one of the kiosks and not the first kiosk. (See, e.g., the plurality of kiosks 101 at FIG. 1; see present Specification, p. 12, lines 19-30). The second user is one of the users. Automatic communication between the second kiosk and the server occurs to authorize the second transaction. (See, e.g., present Specification, p. 15, line 33 – p. 16, line 9; see also steps 502-512, FIG. 5). The second local optical media is dispensed to the second user, at the second kiosk, if the second transaction is approved. (See, e.g., present Specification, p. 16, lines 9-13; see also step 514, FIG. 5).

With respect to claim 19, the first and second kiosks are managed from the central server. (See, e.g., present Specification, p. 2, lines 24-29).

With respect to claim 20, advertising information is communicated from the server to a third kiosk, the third kiosk being one of the kiosks, and the advertising information is communicated to users at the third kiosk. (See present Abstract and Specification, p. 7, lines 12-19).

With respect to claim 21, one of (a) the information is displayed on a screen at the third kiosk (see, e.g., display device 204, FIG. 2 and display 904, FIG. 8) and (b) the information is audibly communicated to the users through speakers (e.g., speakers 962, FIG. 10 and audio device 212, FIG. 2) at the third kiosk. (See, e.g., present Specification, p. 13, lines 4-18).

With respect to claim 23, at least part of information stored in the central server is backed up within internal memory within the first kiosk. (See, e.g., present Specification, p. 5, lines 26-30),

With respect to claim 24, user transactions at the second kiosk and communicating advertising information at the second kiosk are profiled based on the profiling of user transactions. (See, e.g., present Specification, p. 5, line 31 - p. 6, line 11).

With respect to claim 25, user transactions at the first kiosk and communicating advertising information at the first kiosk are profiled based on the profiling of user transactions. (See, e.g., present Specification, p. 5, line 31 - p. 6, line 11).

With respect to claim 26, a group of kiosks are managed through the central server via a personal computer connected to the Internet, the group of kiosks being a subset of all the kiosks. (See, e.g., present Specification, p. 2, lines 32-34, and p. 9, lines 31-33).

With respect to claim 27, advertising information communicated to users is managed at any of the kiosks within the group of kiosks. (See present Specification, p. 2, lines 27-29, and p. 9, lines 31-33).

With respect to claim 28, inventory at any of the kiosks within the group of kiosks is determined. (See, e.g., present Specification, p. 6, lines 17-21).

With respect to claim 29, inventory of each of the kiosks is determined via Internet access through the central server. (See, e.g., present Specification, p. 6, lines 17-21; p. 9, lines 10-13, and p. 12, lines 27-28).

With respect to claim 30, discount coupons are emailed to the first user through the Internet and based on the inventory. (See, e.g., present Specification, p. 9, lines 28-33, and p. 11, lines 6-19).

With respect to claim 31, one or more alarm states associated with the first kiosk are identified. (See, e.g., present Specification, p. 13, lines 21-22, and p. 14, lines 15-22).

With respect to claim 32, the alarm states are automatically identified and information about the alarm states is automatically sent to an administration associated with the central server. (See, e.g., present Specification, p. 13, lines 21-22, and p. 14, lines 20-22).

With respect to claim 33, one or both of voice and text messages are communicated to the administration as a message communicated by one or more of email and a mobile phone, pager, or other wireless device. (See, e.g., present Specification, p. 14, lines 20-22).

With respect to claim 34, individually-targeted promotions are automatically generated at one or more of the kiosks. (See, e.g., present Specification, p. 3, lines 16-21).

With respect to claim 35, unique promotion codes are processed. (See present Specification, p. 6, lines 5-6).

With respect to claim 36, the promotion codes are obtained from the touch screen at the first kiosk. (See present Specification, p. 6, lines 7-8).

With respect to claim 37, the promotion codes are obtained from a magnetic card swipe through a reader at the first kiosk. (See present Specification, p. 8-9).

With respect to claim 38, an individually-targeted coupon is distributed to one or more users of the system. (See present Specification, p. 3, lines 16-21).

With respect to claim 39, a coupon is distributed to a user of the first kiosk. (See present Specification, p. 6, lines 2-5 and p. 11, lines 9-11 and 17-19).

With respect to claim 40, a coupon is distributed that is activated by a transaction at the first kiosk. (See id).

With respect to claim 41, kiosk business data is administered through a remote web-interface. (See, e.g., present Specification, p. 15, lines 10-17).

B. Independent Claim 63, and Dependent Claims 64-68 and 70-71

Claims 63-68 and 70-71 relate to a method for distributing optical recorded media to and from users.

With respect to claim 63 specifically, a plurality of kiosks are coupled to a central server via the Internet, each of the kiosks is configured to dispense a plurality of optical recorded media. (See, e.g., kiosks 101, Internet 104 and media 102, FIG. 1). Inventory of the optical recorded media of each of the kiosks is determined at the server (e.g., server system 103, FIG. 1; see also present Specification, p. 14, lines 7-8). Operational status of each of the kiosks is routinely obtained at the server. (See, e.g., present Specification, p. 14, lines 13-15). A first user automatically interfaces via a touch screen (e.g., touch screen display 904, FIG. 8) at a first kiosk (e.g., kiosk 101 or 200, FIG. 1 or 2) in a first transaction for first local optical recorded media (e.g., media 214, FIG. 2). The touch screen provides a touch-selectable listing of optical recorded media, including the first local optical recorded media, contained within the first kiosk, the first kiosk being one of the kiosks, the first user being one of the users. (See, e.g., present Specification, p. 10, lines 27- 32). The first kiosk and the server automatically communicate to authorize the first transaction. (See, e.g., present Specification, p. 15, line 33 – p. 16, line 9; see also steps 502-512, FIG. 5). The first local optical media is automatically dispensed to the first user if the first transaction is approved. (See, e.g., present Specification, p. 16, lines 9-13; see also step 514, FIG. 5). Return of the first local optical media is accepted into rentable inventory of a second kiosk, the second kiosk being one of the kiosks. (See, e.g., present Specification, p. 5, lines 7-11; p. 21, lines 22-28).

With respect to claim 64, a digital image of the first optical media is captured. (See present Abstract and Specification, p. 5, lines 19-21).

With respect to claim 65, the image is electronically scanned to decode one or more bar codes on the first optical media to determine an identifier of the first optical media. (See present Specification, p. 5, lines 19-21, p. 16, lines 21-23 and p. 21, lines 22-31).

With respect to claim 66, inventory movement of the first optical media is tracked between the first kiosk and the second kiosk. (See, e.g., present Specification, p. 4, line 30-p. 5, line 26 and p. 21, lines 25-31).

With respect to claim 67, advertising information is communicated from the server to any of the plurality of kiosks, to communicate advertising information to the users. (See present Abstract and Specification, p. 7, lines 12-19).

With respect to claim 68, user transactions are profiled at one of the kiosks and advertising information is communicated to the kiosk based on the profiling. (See, e.g., present Specification, p. 5, line 31 - p. 6, line 11).

With respect to claim 70, individually-targeted promotions are generated automatically at one or more of the kiosks. (See, e.g., present Specification, p. 3, lines 16-21).

With respect to claim 71, a coupon is distributed to a user. (See present Specification, p. 3, lines 16-21, p. 6, lines 2-5 and p. 11, lines 9-11 and 17-19).

GROUNDS FOR REJECTION TO BE REVIEWED ON APPEAL

I. The rejection of claims 1, 12, 18-19, 23, 26, 28-29, 31, 63, and 66 under 35 U.S.C. 103(a) based on Newell (U.S. 5,159,560) in view of Kanoh (U.S. 5,934,439), Harman (U.S. 5,095,195), and Smith (U.S. 5,860,362).

II. The rejection of claims 3-7 and 64-65 under 35 U.S.C. 103(a) based upon Newell in view of Kanoh and Harman, Smith, and Koenck (U.S. 6,688,523).

III. The rejection of claims 9-11 under 35 U.S.C. 103(a) based upon Newell in view of Kanoh, Harman, Smith, Koenck, and Rudy (U.S. 4,608,679).

IV. The rejection of claim 13 under 35 U.S.C. 103(a) based upon Newell in view of Kanoh and Harman, Smith, and Maloney (U.S. 6,119,932).

V. The rejection of claims 14-17 under 35 U.S.C. 103(a) based upon Newell in view of Kanoh, Harman, Smith, Maloney, and Ogasawara (U.S. 6,513,015).

VI. The rejection of claims 20-21, 24-25, 27, and 67-68 under 35 U.S.C. 103(a) based upon Newell in view of Kanoh, Harman, Smith, and Tomita (U.S. 6,965,869).

VII. The rejection of claim 30 under 35 U.S.C. 103(a) based upon Newell in view of Kanoh, Harman, Smith, and Crapo (U.S. 2004/0064371).

VIII. The rejection of claims 32 and 33 under 35 U.S.C. 103(a) based upon Newell in view of Kanoh, Harman, Smith, and Peters (U.S. 5,769,269).

IX. The rejection of claims 34, 38-40, and 70-71 under 35 U.S.C. 103(a) based upon Newell in view of Kanoh, Harman, Smith, and DeLapa (U.S. 6,954,732).

X. The "new" rejection of claims 35-37 under 35 U.S.C. 103(a) based upon Newell in view of Kanoh, Harman, Smith, DeLapa, and McCall (U.S. 6,321,984).

XI. The "new" rejection of claim 41 under 35 U.S.C. 103(a) based upon Newell in view of Kanoh, Harman, Smith, and Bernstein (U.S. 5,761,071).

ARGUMENT

As a preliminary matter, it must be noted that all of the rejections appealed below are nearly identical to all of those that were appealed in both of the first and Second Appeal Briefs. This Third Appeal Brief differs from the two previously-filed Briefs mostly where it addresses new citations to prior art references that the Examiner failed to note in the prosecution record. Additionally, arguments relating to newly-cited McCall and Bernstein references replace the previous arguments relating to the DeJaegger and Roberts references, since the Examiner has withdrawn these references from consideration.

As discussed in further detail below though, McCall and Bernstein have not been cited to resolve the clear deficiencies in the original rejections, many of which still remain unanswered. For example, McCall and Bernstein do not provide any additional teachings or suggestions that would motivate one of ordinary skill in the art to make the many different art combinations proposed by the Examiner.

I. THE REJECTION OF CLAIMS 1, 12, 18-19, 23, 26, 28-29, 31, 63, AND 66 UNDER 35 U.S.C. 103(a) BASED ON NEWELL, KANOH, HARMAN, AND SMITH SHOULD BE REVERSED.

A. A *Prima Facie* Case of Obviousness Has Not Been Established.

1. The rejection fails to cite to any teaching or suggestion, or well-known principle in the art, that indicates a desirability to combine the references.

In order to establish *prima facie* obviousness over claim 1 or claim 63, Newell in view of Kanoh, Harman, and Smith must, at a minimum teach or suggest a method for distributing optical recorded media to and from users, including each and every feature of claim 1 and claim 63. The Examiner notes, and Applicants agree, that several features of claim 1 (and also claim 63) are not taught by Newell. The Examiner merely asserts that it would have been obvious for one to modify the teachings of Newell to include certain features of Kanoh, Harman, and Smith, but only pointing to individual portions of those secondary references that express their own desirability. None of the cited portions justify *combining* the references as proposed. This Board should, therefore, reverse the rejection. The rationale presented to support the proposed combination is conclusory at best.

For example, the asserted motivation from Kanoh was to "identify and authenticate a user before dispensing a product to the customer thereby reducing loss of inventory to user's

[*sic.*] who are not registered or recognized." Office Action p. 3, final paragraph. In support of this assertion the rejection points only to Kanoh, col. 4, lines 21-49.

Harman (col. 5, lines 23-39), however, was cited merely for its disclosure of a touch screen that a user touches at appropriate locations in accordance with instructions presented on screen to highlight and select a cassette." The rejection then relies on this simple description of a touch screen to broadly interpret how one of skill in the art would have been motivated to include this specific touch screen with Kanoh and Newell, to create a user interface that is user friendly and easy. Applicants do not dispute that Harman teaches a touch screen. Applicants do dispute that the record ever cites a teaching or suggestion from either reference to actually make the specific combination proposed.

Respectfully, simply identifying different elements from various references, and then simply presuming that such elements could automatically be combined, is a clear violation of Section 2143.01 of the MPEP. Without an actual teaching or suggestion to make the proposed combination, either from the references themselves or a well-known principle in the art, obviousness cannot be established for the proposed combination. The presumption underlying the combination is purely conclusory. The references themselves do not suggest the combination of Newell, Kanoh and Harman. Appellants specifically note that this principle has been recently affirmed by the Supreme Court of the United states, holding that "[r]ejections on obvious grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR International Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). No evidence of a well-known art principle has been submitted on the record.

It is also important to note that Kanoh itself distinguishes against the combination proposed from the cited passage. Kanoh cannot, for example, allow for handling late returns. (See Kanoh col. 1, line 64, through col. 2, line 4). Appellants therefore repeat the unanswered argument of record that nowhere, in either reference, is the desire "to correctly identify and authenticate a customer before dispensing a product to the customer" ever actually described. More particularly, neither reference teaches that the actual motivation conceived of by the Examiner can even be accomplished according to the unique combination of features presented in the pending claims.

Accordingly, the standards of Section 2413.01 of the MPEP are still not met. As codified in Section 2143.01, *prima facie* obviousness cannot be established by merely picking and choosing unrelated features from various references. Instead, the record must show

where the prior art itself teaches or suggests the motivation to combine the references as proposed, absent of course, as in the present case, any evidence in the record of some well-known principle in the art. Without any teaching or suggestion supporting the proposed motivation to combine Newell and Kanoh, the stated rationale is based only upon the Examiner's own personal opinion. Mere conclusory statements, however, without any actual evidence cited on the record in support thereof – the required "rational underpinning" – cannot satisfy the burden to establish the obviousness of combining the references. *In re Lee,* 277 F.3d 1338 (Fed. Cir. 2002); *KSR,* quoted above. Accordingly, the rejection should be reversed for at least these reasons.

Furthermore, the rationale asserted for combining the references is not based on any actual evidence from any of the three cited references. Specifically, the statement that the combination would allow users to "interact with a kiosk in a manner that is user friendly and easy to [*sic.*] which would simplify the use of the kiosk" was repeated *verbatim* from a prior office action, despite the fact that Appellants have since pointed out the fact that none of the references teach any such thing. See page 6, first paragraph of the Office Action; see also pages 4-5 of the final Office Action of May 3, 2007 and Appellants response, at pages 1-12 of the Response of October 31, 2007. Additionally, Applicants' rebuttal evidence, discussed further below, proves that the prior art simply did not provide the "user friendly" combination of features that the Examiner asserts to be obvious.

Without such required evidence on the record – evidence capable of objective review and rebuttal – the rejection presents nothing more than a case of impermissible hindsight. The rejection picks and chooses features from the various references, and then only presumes the obviousness of combining such features. By definition, an Examiner's personal opinion can never satisfy the definition of "documentary evidence, capable of objective review and rebuttal." The Examiner, for example, has not submitted anywhere in the record how he arrived at his conclusory opinion, where he received the knowledge that forms the basis of that opinion, and the actual dates such knowledge was obtained by him. The present case therefore presents the exact situation expressly rejected by the Federal Circuit in *Lee*. The rejection should again be withdrawn for at least this reason.

Smith was only added to the proposed combination after appeal, and then merely for its disclosure of credit card transactions being conducted over the Internet. (See Smith col. 3, lines 30-32). To date, Smith is the only reference of record that teaches any use of the Internet in a system that includes kiosks. Smith, however, does <u>not</u> teach or suggest to

implement the Internet *within* the kiosk system, as incorrectly asserted for the proposed combination. The present claims though, feature that the entire system of kiosks is connected to the central processor via the Internet, and not merely for credit card processing external to a kiosk and its central server. Smith does not, for example, disclose that its credit card processing is through the same central processing system that operates the kiosks, as required by the present claims. Merely having *some* Internet connectivity is not the same as having the kiosks operating all of claimed steps through a single central processor. Accordingly, Smith does not support the actual combination of references proposed.

The impropriety of the presumption of obviousness of combining the cited references is all the more apparent in light of the overwhelming objective evidence submitted by Applicants on October 31, 2007, as secondary considerations to rebut even a properly established *prima facie* case of obviousness. This unchallenged evidence proved that not only has any required motivation to combine the references not been established, such motivation *could not have been* established in light of such objective evidence.

The post-appeal citation to Smith though, even further establishes the nonobviousness of the proposed combination. Smith shows that both kiosks and the Internet were known at the time of the present Application, but clearly does not implement use of the Internet between its own kiosks and its central server. The rejection concludes that such implementation was simply obvious from Smith, but Smith itself fails to realize the specific combination of its own elements as proposed. Accordingly, for at least these reasons as well, the rejection should be reversed.

2. The rejection is deficient on its face for failing to consider all of the language of the claims.

Independent Claims 1 and 63

In order to establish amended claim 1 as being *prima facie* obvious, the combined references themselves (since no other evidence has been submitted on the record to support the rejection) must *additionally* teach each and all of the elements of the claim, as according to Section 2143.03 of the MPEP. In other words, Newell in view of Kanoh, Harman, and Smith must teach Appellants' methods for distributing optical recorded media to and from users. However, none of these references, whether taken alone or in combination, teach all features of claim 1. For example, the combination does not teach coupling kiosks to the single central server via the Internet.

The rejection originally cited only Kanoh for allegedly suggesting such features by its "online" processing of credit cart transactions. The Examiner has now withdrawn this assertion in favor of Smith's disclosure of the Internet for credit card processing. As described above, however, such processing does not teach or suggest that the kiosks communicate with their own central server. Credit card processing is separate from the kiosk and its central server.

It is well known in the art that credit card authorizations are made directly with *banks*. The new rejection that includes Smith thus asserts, at most, a local DVD-distributing kiosk that can authorize credit card purchases through the Internet by contacting a bank. A bank issuing a credit card would have no incentive to distribute DVDs. Although Applicants do not concede that all of these other elements of the claims are also taught or suggested, it is nevertheless clear that the rejection fails to assert all of the recited elements of the present claims. Smith teaches nothing more that *a* use of the Internet. Smith fails to teach or suggest the claimed integration of the Internet into the present kiosk/central server system.

And specifically to the issue of obviousness, one of ordinary skill would understand that Internet applications in 1996 were nowhere near what they are in the present day (or at the effective date of the present Application). More particularly, one of ordinary skill would have been aware of the fact that commercial activity on the Internet was banned until 1991 in the United States, and that the country of Japan was considered as slow to accept the use of the Internet relative to the United States. These facts have not been disputed on the record.

Also of note is the fact that the rejection fails consider the relationship between the Internet and the PSTN at the time of the invention. In 1996, the typical standard used over the Internet was File Transfer Protocol, or "FTP." FTP was common for simple data transfer like a credit card transaction, but it did not allow the true browser level interactivity until the development of the softswitch in 1998, and the subsequent common appearance of browser and VoIP technology. The Internet thus did not truly become the "gateway to the PSTN," for non FTP transactions, until 1998. See http://en.wikipedia.org/wiki/VoIP#History. Smith was filed in 1997, and claims priority to 1996. One of ordinary skill in the art, at the time of the present invention, and without the benefit of the present application, simply would not have found it obvious from Smith to establish a networked system of kiosks connected to a central server through the Internet, as erroneously proposed.

The rejection fails acknowledge that the presently claimed methods were the first to reduce to practice a kiosk DVD system that could benefit from the modernization of Internet

technology that occurred in the late 1990's. The Declaration and Exhibits, discussed below, further prove this point. Since Newell and Harman are silent as to the Internet, and Kanoh teaches nothing more than "online" credit card processing, the repeated and unsupported rejection of claims 1 and 63 are deficient, and should be reversed. No evidence has been submitted that, at the time of the invention, any of the cited art references were capable of even realizing the benefits of the presently claimed methods, and the objective evidence from DeLazzer (discussed further below) also bears out the proof of this issue.

The Section 103 rejection of claims 1, 12, 18-19, 23, 26, 28-29, 31, 63, and 66 should be reversed for at least the reasons above

Dependent Claims 12, 18-19, 23, 26, 28-29, 31, and 66

The courts have ruled that if an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071.5 USPQ2d 1596 (Fed. Cir. 1988). The aforementioned claims are thus each patentable for at least the same reasons as their base claim (claim 1 or claim 62). However, these claims include additional novel features not taught by the suggested Newell/Kanoh/Harman/Smith combination, including:

Claim 19: This claim recites managing first and second kiosks from a central server. Per claim 1, this server is coupled to the kiosks via the Internet. As noted above, none of Newell, Kanoh, Harman, and Smith feature that the kiosks are managed by the central server via the Internet. Credit card processing could not be reasonably interpreted to be the equivalent of "kiosk management," since credit cards are processed at a bank, separately fro the individual management of a kiosk by its central server. Thus, the rejection also fails to establish management of kiosks via an Internet-coupled server, as required by claim 19.

Claim 23: This claim recites backing up at least part of information stored in the central server within internal memory within the first kiosk. The Examiner points to Newell col. 4, lines 12-48, in support of the rejection of claim 23, stating that "the 'reports' would be backed up information within the internal memory within a kiosk." Office Action p. 6, third paragraph. Respectfully, however, the Examiner appears to have misread this passage.

Kanoh specifies that vending machines 104-109 access control processing system 110 to report activity *since the last reporting period*. See col. 4, lines 14-15. There is no indication that reported information is saved by the vending machines after it is shared with control processing system 110. That is, there is no disclosure of "backing up" information,

i.e., saving information in two places at once. Nevertheless, even if Appellants accept, for purposes of this discussion only, that such reporting is related to "backing up," Kanoh could at most only suggest backing up information from a vending machine on a server, <u>but not the reverse</u>. Claim 23 specifically recites backing up information from a central server within memory of a kiosk, and not *vice versa*.

Kanoh, however, fails to disclose the claimed backing up, anywhere. In the sole instances that discuss "back-up memory" in a vending machine, for example, Kanoh specifies that the back-up memory maintains a previous operating condition. See Kanoh col. 5, lines 35-37. In other words, "when power is interrupted, the driving condition at the time of interruption is maintained in the back-up memory... For example, when the transporting mechanism is transporting a video cassette, the storage location is identified on the basis of the content of the back-up memory to transport and store the video cassette to the correct storage shelf 33." Kanoh col. 9, lines 5-13. Backing up an operating condition occurring *within a vending machine* is also different from backing up information from a central server within internal memory of a kiosk. The proposed combination does not teach this claimed feature. Furthermore, nothing in the cited art teaches or suggests that this backup process could also be performed through the Internet. Credit card authentication is not a backup of files from the central server to the kiosk. Accordingly, the rejection of claim 23 specifically is also deficient on its face, and should be reversed for at least these reasons as well.

Claim 26: This claim recites managing a group of kiosks through a central server via a personal computer connected to the Internet. The Examiner notes that Newell does not teach management through an Internet-connected personal computer, and relies upon Kanoh to maintain this rejection. However, as noted above, none of the cited references teach anything done through the Internet other than credit card processing, which is not taught to occur through the same central server that manages the kiosks.

The rejection also fails to establish that Kanoh teaches an Internet-connected PC. Further, it should be noted that Kanoh is silent as to a personal computer. The term is simply not found in Kanoh. The passage cited by the Examiner (col. 6, lines 41-56) discusses a host computer 50 of a control center, which is very different from a personal computer which, according to the present Application, can access a web page supported by a server. (See, e.g., Specification p. 12, lines 27-28). Browser technology protocols through the Internet came later than FTP. For at least these additional reasons therefore, the rejection of claim 26 specifically is also deficient, and should be reversed.

Claim 28: This claim depends from claim 26, and benefits from the above arguments, in addition to those presented for claim 1.

Claim 29: This claim recites determining inventory levels via an Internet connection. Credit card transactions are not management or determinations of inventory levels. A credit card transaction requires nothing more than a connection to a bank that authorizes the credit card at issue, and such a transaction would not take any account of a kiosk inventory to check the credit available on a card at a bank. Accordingly, the specific rejection of claim 29 is also deficient on its face, and should be reversed.

Claims 12, 18, 19, 23, 26, 28, 29, and 31, and claim 66, are submitted to be allowable at least due to their dependence from claims 1 and 63 (respectively), and also due to the individual claim arguments presented above. Appellants respectfully request reversal of the Section 103 rejection of claims 1, 12, 18-19, 23, 26, 28-29, 31, 63, and 66.

B. The Unchallenged Rebuttal Evidence of Record is Sufficient to Overcome Even a Proper Prima *Facie Case* of Obviousness.

In Appellants' Response of October 31, 2007, Appellants presented the substance of the arguments above (except only those arguments directed toward Smith), and even further rebutted the claim rejections of record by factually referencing the substance of the 5-page Declaration that was submitted therewith, along with its 192 pages of attached evidentiary Exhibits. The Declaration and Exhibits clearly contradict, on a purely factual basis, the assertion that the relevant features of the present claims were at all obvious in this field of art. The Examiner was required to give all of this evidence full consideration before repeating the same rejections.

In reply, however, the Examiner merely declared that "The declaration(s) under 37 CFR 1.132 filed 10/31/2007 are insufficient to overcome the rejection of claim 1 based upon 35 U.S.C. 103(a) as being unpatentable over Newell et al. United States Patent 5,159,560 in view of Kanoh et al. United States Patent 5,934,439 and Harman et al. United States Patent 5,195,195 as set forth in the last Office action." The Board will see that this summary dismissal was again simply repeated in September 18, 2008 action (which gave rise to the Second Appeal Brief) on page 3, second paragraph.

In yet the third reopening of prosecution after appeal, the Examiner again repeats this summary dismissal, save for the new indication that the Examiner finds the declaration unpersuasive, not because of the declaration itself (again, <u>no</u> explanation or rationale is given for why the evidence itself is insufficient), but because "the examiner still believes that the art

of record used for the rejection of the claims provides ample evidence of an obviousness rejection." Office Action page 9, second paragraph under heading 2). This statement is nothing more than a reassertion that the Examiner believes that *prima facie* obviousness has been established. The rebuttal evidence, on the other hand, is not answered by reasserting the *prima facie* case. Rebuttal evidence is submitted *after* such a case has been established. Therefore, by the Examiner's own admission, the rebuttal evidence submitted by Applicants has not been answered.

No explanation or rationale, for example, has ever been given by the Examiner for why or how this extensive evidence was itself "insufficient." This statement fails to even indicate whether the quantity (197 pages) of evidence was considered insufficient, or whether the quality of the evidence was allegedly lacking. Appellants could have easily provided, for example, additional evidence to augment the Declaration had the Examiner suggested either. However, Appellants have received no indication as to how the Declaration and Exhibits are allegedly lacking. It appears therefore, that the Examiner effectively ignored the evidence in its entirety, as a matter of law.

Again, unchallenged rebuttal evidence can be sufficient to overcome even a proper *prima facie* case, regardless of how persuasive the Examiner finds his own case. When presented with such evidence, the Examiner is required to indicate why a declaration and accompanying evidence is *itself* unpersuasive. Section 716 of the MPEP gives express instructions for the Examiner to "set forth the reasons for the insufficiency...Also include a ***detailed explanation of the reasons why the affidavit or declaration is insufficient.***" Paragraph 7.66(5), emphasis added. In the present case, however, these requirements have not been satisfied.

Even had a *prima facie* case of obviousness been established in the present case (which Appellants do not concede, as discussed in detail above and below), the final determination of obviousness is not settled. Instead, the burden merely "shifts to the applicant to come forward with evidence and/or argument supporting patentability." *In re Glaug*, 283 F.3d 1335, 1338 (Fed. Cir. 2002). The evidence submitted on rebuttal can be any "showing of facts support the opposite conclusion [from the Examiner]," *In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984), including evidence of commercial success. *WMS Gaming, Inc. v. Int'l Game Tech.*, 184 F.3d 1339, 1359 (Fed. Cir. 1999). The Examiner is *required* to consider all such evidence of nonobviousness when assessing patentability. *In re Soni*, 54 F.3d 746, 750 (Fed. Cir. 1995); *In re Sernaker*, 702 F.2d 989, 996 (Fed. Cir. 1983). In the

present case, the Examiner appears to have failed to meet this burden. For example, there are no comments that show that the Examiner is even familiar with the evidence submitted.

Furthermore, Appellants also presented secondary considerations of nonobviousness as evidenced by U.S. Patent No. 7,234,609 to DeLazzer ("DeLazzer"), which is considerably antedated by the present Application. More than three years after the filing of the present Application, DeLazzer discloses that a number of the features recited in the present claims have "substantial benefits" and "*distinguish from conventional options*." (Emphasis added; see also tables 1 and 2, presented at pages 17-19 of the October 31, 2007 response, included in the attached Evidence Appendix). Appellants presented this question: If DeLazzer, (who, as an inventor of a DVD distribution system can be presumed to be one of skill in the art) cited claimed features of the present Application as "distinguishing from conventional options" almost three years <u>after</u> the filing date of the present Application (and almost seven years after the filing date of Kanoh), then how could such features have been obvious at the time Appellants' invention was made? See Response of October 31, 2007, pages 17-20. The record shows that there has never been an attempt to respond to this evidence of nonobviousness either.

The record further shows no attempt to answer or challenge Appellants' evidence of scepticism by experts, commercial success, or copying by others, which are listed among MPEP's secondary considerations of nonobviousness. See Section 2141(III) of the MPEP. See Response of October 31, 2007, page 24. Pursuant to Section 2141(III), "Objective evidence or secondary considerations such as unexpected results, commercial success, long-felt need, failure of others, copying by others, licensing, and scepticism of experts are relevant to the issue of obviousness and must be considered in every case in which they are present. When evidence of any of these secondary considerations is submitted, the examiner <u>must</u> evaluate the evidence." (Emphasis added).

In the present case, the record provides no evidence that the Examiner has given any meaningful consideration to the extensive rebuttal evidence submitted by Applicant. The Examiner has not indicated why the rebuttal evidence is insufficient, other than to say that he "still believes that the art of record used for the rejection of the claims provides amble [*sic.*] evidence of an obviousness rejection. The examiner notes that work in one filed [*sic.*] of endeavor may prompt variations of technology for use in the same filed [*sic.*] as shown by Newell, Konah [*sic.*], Harman, and Smith and may be based on design incentives which allow these variations of technology the ability achieve predictable result [*sic.*] based on the

knowledge of one of ordinary skill in the art. ***Therefore*** the examiner finds the declaration unpersuasive and maintains the rejection." (Office Action, page 9, last two paragraphs, emphasis added).

The Rule 132 Declaration and Exhibits of record clearly demonstrate commercial success (by the Assignee of the present Application, DVDPlay, Inc.) in the field, including increased market share, that directly stems from implementing a kiosk system according to the present method claims, pursuant to Section 716.03(b)(IV) of the MPEP. Specifically, as also proven by the evidence submitted, the Assignee of the entire right, title, and interest in and to the present Application, currently holds approximately 16-20% of the movie rental kiosk market.

As also noted in the Rule 132 Declaration, the present Application, and its parent Applications (U.S. 09/578,631 – now U.S. Patent No. 7,444,296 – and provisional Applications U.S. 60/135,851 and U.S. 60/143,601) introduce a unique combination of steps for distributing optical recorded media to the DVD vending kiosk market. Prior to the present Application, there were no kiosks or machines that combined Assignee's steps into a single method for distributing optical recorded to and from users. The rejection is unable to identify the unique claimed combinations in any one of the *fourteen* cited references, or in any other evidence available to the public.

Consider, for example, the evidence of the explosive growth of the DVD vending kiosk market after the implementation of the present Application and its parent applications. Prior to this implementation, the DVD vending kiosk market was essentially non-existent. Applicants performed an Internet search for statistics of the DVD vending kiosk market prior to 2000 (the filing year of U.S. Patent No. 7,444,296, of which the present Application is a continuation) and prior to 1999 (the parent provisional filing year), and found that there was very little market. In fact, DVD rentals did not even surpass VHS rentals until 2001, and the two different systems are not mere substitutes for one another. See "DVD," Consumer Electronics Association ©2007, at http://www.ce.org/Press/CEA_Pubs/929.asp, also included in the attached Evidence Appendix. Applicants encouraged the Examiner to conduct his own search for pre-2001 DVD rental kiosk sales, but the record shows no evidence of any such search.

Since Assignee introduced its unique claimed methods for distributing optical recorded media to and from users, the movie rental kiosk market has grown to an estimated $120 million per year industry (see the Rule 132 Declaration at Section B, number 5).

DVDPlay, Inc.'s revenue for 2007 is expected to be about $18 million (about 18-20% of the current market), and Assignee rented its 10 millionth movie in September 2007. See Declaration at Section B, item number 5, for additional statistics. Accordingly, Appellants have unquestioningly established both commercial success and market share as a direct result of the claimed methods that are the subject of this appeal.

Note also the unchallenged evidence submitted of the scepticism of experts (another recognized rebuttal secondary consideration per Section 2141(III) of the MPEP), and specifically that of Brad Hackley, Vice President of business development for the home video group at industry tracker Rentrak: "Practically no one saw this coming…the kiosks came out of nowhere." See "Self-Serve Movie Rental Kiosks A Surprise Hit With Consumers; DVD vending machines find national audience, put pinch on retailers," *Investor's Business Daily*, May 31, 2007 at Exhibit A, pp. A9-A10, *esp.* p. A10, ¶4 (included in the attached Evidence Appendix). See also heading entitled "Secondary Considerations of Nonobviousness – Scepticism of Experts," below. These statements by industry experts directly contradict the Examiner's conclusory statements that the existing prior art "could have been" obviously adapted and combined to create the methods of the present claims.

Likewise, Assignee's competitors, in particular majority market holder Redbox, have enjoyed increased commercial success since Assignee introduced its methods and related systems. However, it is unchallenged in the record that "*Redbox jump-started its DVD rental business by offering re-branded kiosks manufactured and operated by Silicon Valley-based DVDPlay, Inc.* These machines were deployed to 140 locations in the McDonald's test market of Denver, Colorado. In May of 2005, Redbox announced it was phasing out the DVDPlay-manufactured machines and instead would contract Solectron (not associated with Assignee) to create and manufacture a custom kiosk design," a design, however, which essentially copied the features of the present claims. (See Wikipedia's "Redbox" article at http://en.wikipedia.org/wiki/Redbox, emphasis added, included in the attached Evidence Appendix).

In other words, Redbox created its current machines only after several years' experience with Assignee's kiosks and methods, which incorporate Assignee's unique combination of presently claimed features. Redbox's success did not occur in a bubble, but is instead shown on the record to have been clearly linked to the present Application and its parents. See, e.g., Sections C and D of Exhibits ("Copying by Others" and "Commercial Success of Others Due to Copying DVDPlay Systems," included in the attached Evidence

Appendix), avowing copying of the Assignee systems by Redbox and Redbox's subsequent success. Given Redbox's *majority* share of the market and Redbox's experience with and exposure to the Assignee systems, Applicants submit that the majority of commercial success of the DVD vending kiosk market in general (since the filing of the present Application and its parents) can be attributed to Applicants' present invention – i.e., the unique combination of claim elements in the present Application.

In accord with Section 716.03(b)(II) of the MPEP, the unchallenged commercial success shown on the record clearly flows from the functions and advantages disclosed in or included within the scope of the pending claims as interpreted in light of the present Specification. There is an unchallenged nexus between the claimed inventions of the present Application and this commercial success. See the Rule 1.132 Declaration, item 7, and cited Exhibits. (See the Rule 1.132 Declaration, item 7 and cited Exhibits). Among exemplary disclosures, see also p. 2, line 32-p. 3, line 34 and p. 7, line 25 - p. 9, line 29 of the present t Specification.

For example, as in claim 1 of the present Application, DVDPlay systems operate according to a method for distributing optical recorded media to and from users, including coupling one or more kiosks to a central server via the Internet. (See, e.g., Exhibit B, pp. B1, ¶2-3 and 6; B7, last ¶; B11, last ¶; B25, ¶2; B26, ¶1; B80, ¶3 (noting the "huge benefit" of DVDPlay, Inc.'s Internet connectivity)). Each kiosk contains a plurality of optical recorded media. (See, e.g., Exhibit B, pp. b1, ¶8; B26, ¶5, B30, ¶4; see also Exhibit C, pp. C2-C3 and C11, attached Evidence Appendix). Inventory of the optical recorded media of each of the kiosks is determined at the server and operational status of each of the kiosks is routinely obtained at the server. (See, e.g., Exhibit B, pp. B1, ¶7; B9, ¶1; B11, ¶¶2 and 6; B20, ¶10; B25, ¶1; B27, ¶1; note also Tejas Videos' CEO statement of reduced costs "due to the ability to remotely manage tasks from one centralized location," p. B80 ¶2).

The present method also includes the step of automatically interfacing with a first user via a touch screen at a first of the kiosks, in a first transaction for first local optical recorded media. (See, e.g., Exhibit B, p. B11, ¶5 description of "fully-automated touch-screen interface;" see also pp. B1, ¶8; B4, ¶5; B11, ¶5, Exhibit C, pp. C1-C5 and C7). The touch screen provides a touch-selectable listing of optical recorded media, including the first local optical recorded media, contained within the first kiosk. (See, e.g., Exhibit C, pp. C1-C5 and C7). The first kiosk and the server automatically communicate to authorize the first transaction. (See, e.g., Exhibit B, p. B11, especially ¶6, noting intelligent backend that

communicates with kiosk and manages credit transactions; see also Exhibit B, p. B9, ¶1; Exhibit C, pp. C6-C9). The first local optical media is dispensed from the first kiosk to the first user if the first transaction is approved. (See, e.g., Exhibit C, pp. C6-C9). The method also includes the step of accepting return of the first local optical media into rentable inventory of a second of the kiosks. (See, e.g., Exhibit B, pp. B13, ¶2; B15, ¶4; B24, 3; B26, ¶4, noting that "All returned movies are instantly available for re-rental;" see also Exhibit B p. B37, ¶2, and letter from Tejas Videos' CEO, stating that returning to another kiosk is "a huge benefit," Exhibit B, p. B80, ¶3).

As in claim 63 of the present Application, the DVDPlay system also operates according to a method for distributing optical recorded media to and from users. A plurality of kiosks is coupled to a central server via the Internet, each of the kiosks configured to dispense a plurality of optical recorded media. (See, e.g., Exhibit B, pp. B1, ¶2-3 and 6; B7, last ¶; B11, last ¶; B25, ¶2; B26, ¶1; B80, ¶2). Each kiosk contains a plurality of optical recorded media. (See, e.g., Exhibit B, pp. b1, ¶8; B26, ¶5, B30, ¶4; see also Exhibit C, pp. C2-C3 and C11). Inventory of the optical recorded media of each of the kiosks is determined at the server, and operational status of each kiosk is routinely obtained at the server. (See, e.g., Exhibit B, pp. B1, ¶7; B9, ¶1; B11, ¶¶2 and 6; B20, ¶10; B25, ¶1; B27, ¶1; B80, ¶4).

The DVDPlay system automatically interfaces with a first user via a touch screen at a first of the kiosks, in a first transaction for first local optical recorded media. (See, e.g., Exhibit B, p. B11, ¶5 description of "fully-automated touch-screen interface;" see also pp. B1, ¶8; B4, ¶5; B11, ¶5; Exhibit C, pp. C1-C5 and C7). The touch screen provides a touch-selectable listing of optical recorded media, including the first local optical recorded media, contained within the first kiosk. (See, e.g., Exhibit C, pp. C1-C5 and C7). The DVDPlay system automatically communicates between the first kiosk and the server to authorize the first transaction. (See, e.g., Exhibit B, p. B11, especially ¶6 noting intelligent backend that communicates with kiosk and manages credit transactions; see also Exhibit B, p. B9, ¶1; Exhibit C, pp. C6-C9). If the first transaction is approved, the first local optical media is dispensed to the first user. (See, e.g., Exhibit C, pp. C6-C9). Upon return, the first local optical media is accepted into rentable inventory of a second of the kiosks. (See, e.g., Exhibit B, pp. B13, ¶2; B15, ¶4; B24, 3; B26, ¶4, noting that "All returned movies are instantly available for re-rental;" Exhibit B p. B37, ¶2; B80, ¶3, noting the "huge benefit" of accepting returns at a second kiosk).

The combined steps of claim 1 and the combined steps of claim 63 therefore each provide for high speed, remotely managed and accessible kiosks with small physical footprints; kiosks which allow credit-card transactions, remote administration and return of media to a kiosk other than the kiosk from which the media was rented. (See repeated reference to such benefits throughout the Exhibits to the Rule 1.132 Declaration, e.g., at Exhibit B, p. B1, ¶¶ 1-3 and 6; p. B3, ¶2; P. b4, ¶¶3-4, p. B11, ¶2; B13, ¶2; p. B24, ¶¶1-5; p. B37, ¶¶2, 4 and 5). "Internet connectivity enables remote administration – making it easy to gauge customer preferences, deliver reports, restock products and keep track of financial data...Because these AEMs are Internet-connected, screen-navigable, cashless, and remotely managed, labor, administrative costs, and responsibilities are kept to a minimum." (Exhibit B p. B11, ¶2).

Furthermore, connecting a kiosk or kiosks to a central server, as in claims 1 and 63, "permits realtime remote control and administration of all <u>functions and features</u>." (Von Shows, CEO of Tejas Videos, Inc., see Exhibit B, p. B24, ¶3 (describing more than just the cited credit card authorizations); see also Mr. Shows' comments regarding enhanced connectivity, management, diagnostic, inventory, efficiency, profitability, customer service, and update benefits provided by DVDPlay systems, at Exhibit B, p. B80). Note especially Mr. Shows' comment that "without these features, I don't believe it would be economically feasible for me to run my operations as I currently do today." (P. B80, ¶5). Note also that "DVDPlay kiosks score highly, much to the satisfaction of the convenience stores that house these kiosks, as the entire system is automated, including the inventory management." (Frost Sullivan Award to DVDPlay at Exhibit B, p. B74, ¶1).

At the same time, the combined steps of claims 1 and 63 additionally provide convenience to, and increase confidence in, customers transacting via the kiosks. (See, e.g., Exhibit B, pp. B1-B2 (note that Freeflyr Automation is now DVDPlay, Inc.) and B20, ¶8; see also p. B55 ¶1 noting convenience and ease of use of Redbox machines, which are <u>pre-dated</u> by the '631 application and which copy features of the DVDPlay system). All of this evidence is detailed at length in the section of the Declaration referring to "Copying by Others."

Applicants submit that the Rule 132 Declaration (with Exhibits), by itself, provides ample secondary considerations (in at least the form of a showing of commercial success, market share, evidence of sceptics, and copying by others) to fully rebut the Section 103 rejection of claims 1 and 63. Additionally, tables 1 and 2 and page 24 of the October 21,

2007 Response present additional secondary considerations – namely, identification by one of skill in the art of claimed features as being different or beneficial when compared to "conventional options." These additional secondary considerations also warrant this Board's full consideration and reversal of the outstanding Section 103 obviousness rejection on rebuttal.

II. THE REJECTION OF CLAIMS 3-7 AND 64-65 UNDER 35 U.S.C. 103(a) BASED UPON NEWELL, KANOH, HARMAN, SMITH, AND KOENCK SHOULD BE REVERSED.

Appellants first note that claim 66 is included in the heading of the Examiner's response to this section of the Second Appeal Brief. See pending office action, page 21. However, claim 66 is not discussed in the Examiner's arguments, nor is it mentioned or noted in the substantive rejection on page 39 of the pending office action. Accordingly, the Examiner's inclusion of claim 66 is believed to be a typographical error, and claim 66 is not discussed in this section.

Claims 3-7 depend from claim 1, and claims 64-65 depend from claim 63, and thus benefit from like argument. Adding Koenck to the same combination does not remedy the failure of Newell, Kanoh, Harman, and Smith to demonstrate a *prima facie* case of obviousness over claim 1 and claim 63. Accordingly, the proposed combination also cannot and does not establish *prima facie* obviousness over claims 3-7 and 64-65. See *In Re Fine*, quoted above.

For example, Koenck is also completely silent as to any central management of kiosks through the Internet (as discussed above). Thus, base claims 1 and 63 can only be nonobvious in view of the Newell, Kanoh, Harman, Smith, and Koenck combination as well. Furthermore, the ample unchallenged evidence of record is more than sufficient to overcome even a *prima facie* case of obviousness (even could one have been properly made based on this combination, and Appellants again submit that no such case has been made). Accordingly, claims 3-7 and 64-65 are allowable over the cited combination for at least these reasons.

Additionally, claims 3-7 and 64 recite capturing a digital image of a code. Claim 65 depends from claim 64 and recites electronically scanning the digital image to decode one or more bar codes…to determine an identifier of the optical media. Koenck is added to the Newell/Kanoh/Harman/Smith combination as somehow allegedly rendering digital image

capture. Newell, however, specifically describes a "self-contained, automated vending apparatus," (col. 1, lines 67-68), whereas Koenck, on the other hand, specifically describes a "hand-held area image scanner" that scans a code to produce a digital signal that is processed and recognized off-line. (Col. 2, lines 7-23). Combining the hand-held scanner of Koenck with the apparatus of Newell would therefore directly interfere with the self-contained automation goals of Newell. A combination is not obvious if it would render one of the references unfit for its intended purpose.

Appellants presented this argument to the Examiner, and in response, the Examiner stated that Koenck was used for its teaching of digital image capture, which "*could have been* made internal, as a matter of design choice." (See previous Office Action p. 32, first paragraph). First of all, the Examiner's personal opinion of what "could have been" is not relevant to establishing a case of obviousness. See *KSR*, above, noting that conclusory statements cannot uphold obviousness rejections. Section 2143.01 also bars obviousness conclusions based on only what "can be" done. Second, none of the cited references themselves teach or suggest such "internalized" digital image capture at all, let alone for the design reasons asserted by the Examiner. In fact, Koenck expressly teaches against all optical character readers but his own, hand-held version, stating: "[t]o date, there doesn't appear to be an optical character reader (OCR) product available that realistically has the capability to be operated portably. Power consumption and circuit complexity seem to be the factors that have discouraged development in this area." Col. 1, lines 46-50.

Accordingly, since the cited art does not itself provide motivation for the proposed combination, and since Koenck teaches against all optical readers but his own hand-held model (and therefore against a combination with at least that of Newell), all that remains on the record in support of the Examiner's rejection is his own conclusory opinion that internalizing digital image capture would have been obvious "if wanted (e.g., an act of design choice to make it internal)."

Again, mere conclusory statements from the Examiner, without any actual evidence cited on the record in support thereof, <u>cannot</u> satisfy the Examiner's burden to establish the obviousness of combining the references. *KSR*, *In re Lee*. As also codified in Section 2143.01 of the MPEP, *prima facie* obviousness cannot be established by merely picking and choosing unrelated features from various references. The Examiner has the additional burden to indicate in the written record where the prior art itself (absent any evidence in the record of some well-known principle in the art) teaches or suggests the motivation to combine the

references as proposed. In the present case, however, the rejections do not even assert that any such teachings or suggestions *exist* in the prior art, or were otherwise "well-known." Plus, the art itself teaches away from the suggested combination, which is, by itself, also sufficient to rebut even the asserted case of obviousness, had it been properly established.

The rejection of claims 3-7 and 64-65 should therefore be reversed for these reasons, and for the reasons argued above with respect to base claims 1 and 63. Appellants respectfully request withdrawal of this Section 103 rejection.

III. THE REJECTION OF CLAIMS 9-11 UNDER 35 U.S.C. 103(a) BASED UPON NEWELL, KANOH, HARMAN, KOENCK, SMITH, AND RUDY SHOULD BE REVERSED.

Claims 9-11 depend from claim 1, and should be in condition for allowance for at least the reasons discussed above with respect to the base claim.

Furthermore, adding Rudy to the combination of Newell, Kanoh, Harman, and Smith does not establish a case of *prima facie* obviousness over claim 1. For example, Rudy also fails to teach management of the kiosks by a central server through the Internet. As the rationale for a motivation for the proposed combination, the Examiner first cites Rudy col. 7, lines 15-51, and asserts that "One of ordinary skill in the art would have been motivated to combine the teachings in order to quick effective method to retrieve optical storage." Office Action page 12, last paragraph. Rudy col. 2, lines 3-53, is then cited as the source for this motivation. This asserted rationale, however, has nothing to do with claims 9-11. Claims 9-11 deal with the return of optical media, and not the *retrieval* described in Rudy.

It is improper for the Examiner to simply declare, in a conclusory fashion, that Rudy's retrieval system may be obviously combined with Newell's "return" disclosures without citing something to support the combination other than the Examiner's own personal opinion. The cited portions from these two separate references address entirely different functions, and the rejection fails to cite any actual teaching or suggestion from either reference that would direct one of ordinary skill in the art to attempt to combine one reference with the other as the Examiner proposes. Without such evidence from the art itself, the Examiner was required to submit to the record the "well-known principle" in the art that would supply the motivation to one of ordinary skill to make the combination, as required by *KSR*. No such evidence, however, appears on the record, and thus the obviousness rejection is dependent upon forbidden conclusory opinions.

Furthermore, the rejection is deficient because ***claim 9*** features that accepting return of optical media includes the additional steps of sensing characteristics of a case, determining whether the characteristics match predetermined characteristics associated with a kiosk, *and then* opening an input slot responsive to a match. Rudy, however, cannot read upon these limitations of the claim, as erroneously asserted in the rejection. Rudy discloses that the detection of a hole in a cartridge occurs *within input/output slot 54*. (See col. 7, lines 15-51, describing use of the hole to determine whether the case is correctly positioned within slot 54; see also FIG. 5). Rudy's system is therefore significantly different from the method of claim 9, which requires <u>opening a door responsive to a match</u>.

Additionally, Rudy does not teach determining if characteristics match a predetermined characteristic *associated with a kiosk*, as also featured in claim 9. Rudy's cartridge holes are used only to determine whether the cartridge is correctly positioned. (See col. 7, lines 39-51). Rudy neither teaches nor suggests that the positioning holes have anything to do with <u>identifying a kiosk</u>. This element of claim 9 is missing in Rudy, and the Examiner even admits that the claimed feature is missing from Newell, Kanoh, Harman, and Smith. (Office Action, p. 12, fourth paragraph). Accordingly, the Section 103 rejection of claim 9 should be reversed for at least these reasons as well.

Claims 10 and 11 depend from claim 9, and thus should be allowable over the cited combination for the same reasons. Reversal by the Board of this Section 103 rejection of claims 9-11 is therefore also respectfully requested.

IV. THE REJECTION OF CLAIM 13 UNDER 35 U.S.C. 103(a) BASED UPON NEWELL, KANOH, HARMAN, SMITH, AND MALONEY SHOULD BE REVERSED.

Claim 13 currently stands rejected under 35 U.S.C. 103(a) as being unpatentable over the Newell/Kanoh/Harman/Koenck/Smith combination, and further in view of Maloney. As noted above, Newell, Kanoh, Harman, Koenck, and Smith do not establish a *prima facie* case of obviousness over claim 1, from which claim 13 depends.

Adding Maloney to the proposed combination does not remedy the clear deficiencies of the base references taken separately. For example, Maloney similarly fails to teach or suggest kiosk management through the Internet, as opposed to mere credit card authorizations from a bank. Furthermore, Maloney cannot and does not refute the ample rebuttal evidence (evidence of commercial success, copying by others, indication of novelty by one of skill in

the art, and scepticism of experts) provided in the Rule 132 Declaration and Exhibits, and in Appellants' response of October 31, 2007. All of these papers are provided in the attached Evidence Appendix.

For at least these additional reasons, *prima facie* obviousness has not been established with respect to claim 13. Appellants therefore respectfully request that the Board also reverse this Section 103 rejection.

V. THE REJECTION OF CLAIMS 14-17 BASED ON NEWELL, KANOH, HARMAN, SMITH, MALONEY, AND OGASAWARA SHOULD BE REVERSED.

Claims 14-17 stand rejected under 35 U.S.C. 103(a), based upon Newell, Kanoh, Harman, Maloney, Smith, and Ogasawara. However, as discussed above, the combination of Newell, Kanoh, Harman, Maloney, and Smith does not establish a *prima facie* case of obviousness over claim 1, or by extension, over claim 13. ***Claims 14-17*** depend from claim 1, via claim 13, and therefore also cannot be rendered obvious by the Newell/Kanoh/Harman/Maloney/Smith combination.

Adding Ogasawara to the base combination of references does not resolve the clear deficiencies of Newell, Kanoh, Harman, Maloney, and Smith taken separately. For example, Ogasawara is itself also silent with regard to any management of kiosks by a central server through the Internet, and Ogasawara cannot and does not contradict – or even relate to – any of the extensive rebuttal evidence (secondary considerations of non-obviousness) provided in the attached Evidence Appendix. Accordingly, claims 14-17 should also be allowable over Newell, Kanoh, Harman, Maloney, Smith and Ogasawara for at least these additional reasons.

Moreover, with regard to ***claim 17*** specifically, this claim features the transmission of images to the central server which, per claim 1, is coupled to kiosks via the Internet. These features are simply not taught by Newell, Kanoh, Harman, Maloney, Smith, or Ogasawara, whether taken alone or in combination. Reversal by this Board of the Section 103 rejection of claims 14-17 is also requested.

VI. THE REJECTION OF CLAIMS 20-21, 24-25, 27, AND 67-68 BASED ON NEWELL, KANOH, HARMAN, SMITH, AND TOMITA SHOULD BE REVERSED.

In this rejection, the Examiner correctly notes that Newell, Kanoh, Harman, and Smith are all silent with respect to communicating advertising information from a server to a third kiosk, and communicating the advertising information to users at the third kiosk. See Office Action page 18, first full paragraph. Tomita alone is relied upon as allegedly teaching such claim features. However, per claims 1 and 63, from which these rejected claims depend, the server is connected to and manages the kiosks through the Internet, and Tomita is similarly silent as to any kiosk management through the Internet. Therefore, the combination of Tomita with Newell, Kanoh, Harman, and Smith fails to establish a *prima facie* case of obviousness over ***claims 20 and 67***, which include such a server, and also over ***claim 21***, which depends from claim 20.

Moreover, with respect to ***claims 24, 25 and 68***, these claims additionally feature profiling a user transaction at a kiosk and communicating advertising information <u>based on the profiling of user transactions</u>. The Examiner erroneously asserts that such features are taught by Tomita. Tomita teaches the *accumulation of points* when transactions occur. The issuer provides point information to the point accumulator and the point accumulator accumulates the points and transfers the updated point information to the point notifier which notifies the customer terminals and ultimately the customers. See col. 5, lines 41-47. The purchase data is compared to the purchase condition table to determine if points are calculated and transferred to the points accumulator for a transaction.

Tomita, however, fails to teach that the transaction data is stored in a customer profile, or is otherwise used for communicating advertising information that is based on the transaction data. See col. 8, lines 43-52. Instead, Tomita simply adds transaction points to total points. No particular information is stored about a transaction itself. Therefore, it is not possible to communicate <u>transaction-based advertising information</u> at the kiosk. Even if the Examiner considers "points information" of a transaction to be equivalent to profiling a user transaction as claimed (Appellants submit that they are <u>not</u> the same), Tomita still does not communicate <u>advertising information</u> at the kiosk based on such "profiling" of that user transactions.

It is important to note that Tomita's step S8 displays point service information which can include special days particular to the customer, such as a birthday, wedding anniversary. This information is particular to a customer, but it is clearly not part of a <u>transaction profile</u>,

as erroneously asserted by the Examiner, and therefore the information cannot be information based on the profiling of user transactions. See Tomita col. 6 lines 26-32.

Appellants presented the above arguments in the Response of October 31, 2007. In response, the Examiner merely referred back to the Office Action mailed on May 3, 2007. The "Response to Arguments" section of that paper simply points to the same col. 5, lines 14-61, col. 6, lines 26-32, col. 8, lines 31-52 and col. 6. lines 19-25, and states that "Tomita accrues points based on of [*sic*] transactions performed by the customer and then presents target points (e.g. which refer to special services) to the customer. These services include special sales, etc.... The Examiner did provide a prima facie case of obviousness, motivation was cited, there is reasonable expectation of success, and the references teach or suggest all of the limitations of the claim. Thus the argument is not persuasive." Office Action of May 3, 2007, paragraph spanning pages 32-33. By simply referring to the earlier rejection, the argument still remains effectively unchallenged on the record, and this argument has not been rendered "moot" by the mere addition of Smith to the same combination.

Furthermore, the entire "motivation" referenced by the Examiner was that "One of ordinary skill in the art would have been motivated to combine the teachings in order to provide advertising information to a customer, which improves and attracts the customers' interest." Office Action of May 3, 2007, paragraph spanning pages 18-19; see also page 20, third paragraph. Accordingly, the asserted motivation explains a rationale only for *providing advertising*, but not any motivation for profiling user transactions. The references themselves do not teach or any such motivation for profiling user transactions, as argued above, because *Tomita simply does not profile transactions.* Tomita accumulates points, which is different from profiling a transaction as clearly defined in the present Application, where "the invention provides an automated customer profiling system. The system tracks interactions from customers at either a connected kiosk or at a computer connected to the database server through the Internet. Customers may be profiled according to individual information, such as movie-type preferences." Specification, p. 5, lines 1-34.

The Examiner's response of May 3, 2007 does not answer the substance of the previously submitted meritorious arguments above, as erroneously asserted. Appellants again submit that claims 20-21, 24-25, 27, and 67-68 are non-obvious in view of Newell, Kanoh, Harman, Smith, and Tomita, alone or together, in light of at least these arguments. Furthermore, the proposed combination does not establish a *prima facie* case of obviousness over base claims 1 and 63, nor does the combination refute the extensive volume of evidence

of nonobviousness that remains unchallenged on the record (included in the attached Evidence Appendix). Accordingly, reversal of the Section 103 rejection of claims 20-21, 24-25, 27, and 67-68 is also respectfully requested for at least these reasons.

VII. THE REJECTION OF CLAIM 30 BASED ON NEWELL, KANOH, HARMAN, SMITH, AND CRAPO SHOULD BE REVERSED.

Claim 30 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Newell, Kanoh, Harman, and Smith, and further in view of Crapo. Appellants again respectfully traverse this rejection and request reversal by this Board.

Appellants previously noted on the record that Crapo fails to teach emailing discount coupons based upon "the inventory," as clearly featured in claim 30 (which, per dependence on claim 29, is the "inventory of each of the kiosks"). Crapo simply does not teach or suggest to email coupons <u>based upon kiosk inventory</u>. Instead, and as the Examiner even admits, Crapo discloses emailing coupons only *based upon partner inventory*: "For example, such communications may include last minute deals, offers of bonus miles, specials, sales or other incentives proved based on partner inventory or partner input on behavior the partners are interested in motivating." Crapo, p. 6, paragraph [0052].

The partner inventory to which Crapo refers is the inventory of credit card company partners, in particular, miles: "The partners 204 can be any individual or company that wants to generate loyalty and to do so offers WebMiles in conjunction with particular behaviors, most often purchasing behaviors, that the partner 204 wants to encourage." Crapo, p. 3, paragraph [0035]. *Partner* inventory (miles) simply is not the same as <u>kiosk</u> inventory, and the Examiner has not given any effective answer to this dispositive argument, namely, that the proposed combination fails to consider all of the recited claim limitations, as required. Thus, combining Newell, Kanoh, Harman, and Smith with Crapo still fails to teach emailing discount coupons based upon kiosk inventory.

In response to the above arguments, the Examiner has merely stated that Crapo teaches "emailing coupons through the internet based on inventory." Office Action p. 21, third full paragraph. However, claim 30 requires that coupons are emailed based upon <u>kiosk inventory</u>, and the Examiner has given no explanation at all how kiosk inventory is equivalent to the partner inventory cited, that is inventory of something outside of the kiosk network. As discussed above, the only "inventory" disclosed in Crapo are the miles of a credit card company. Miles are not a material inventory in the manner of the present

Application inventory, or more particularly the actual inventory of the kiosks featured in the claims. Optical recorded media are tangible, physical objects, whereas miles are simply intangible numbers or data information awarded by a credit card company. Accordingly, the Examiner has not answered in any way the traversal of this particular Section 103 rejection.

Additionally, Appellants have submitted ample evidence of nonobviousness, e.g., in the form of the Declaration of Jens Horstmann and accompanying Exhibits. Appellants again respectfully request the Board's full consideration of this rebuttal evidence. As discussed above, these secondary considerations from the Declaration remain entirely unchallenged on the record, and by themselves are more than sufficient to overcome even a proper *prima facie* case of obviousness.

Accordingly, this Board should reverse this rejection as well, for at least these reasons.

VIII. THE REJECTION OF CLAIMS 32-33 BASED ON NEWELL, KANOH, HARMAN, SMITH, AND PETERS SHOULD BE REVERSED.

As discussed above, the combination of Newell, Kanoh, Harman, and Smith fails to establish a *prima facie* case of obviousness over independent claim 1. The mere addition of Peters to this proposed combination does not remedy the clear deficiencies of the base references by themselves. For example, Peters is also silent as to any management of the kiosks through the Internet by the central server. Accordingly, Peters does not resolve the deficiencies of the asserted *prima facie* case of obviousness over claim 1, or by extension, over its dependent claims 32 and 33.

Peters fails to even describe or depict a central server. Instead, Peters discloses only vending machines communicating with a central customer service *location* via telephone communication, but with a "customer service representative [who] can service, monitor, and assist the customers by computer modem access from a remote monitoring site on a single phone with a single connection," Peters, col. 3, lines 5-10; see also lines 11-16; Fig. 1B, showing a vending machine communicating with a customer service representative over a telephone line. In other words, "The vending machine 30 and CSR 20 share information across telco line 48." Peters, col. 5, lines 32-24. A human being cannot read upon the central server of the present claims.

A customer service representative working on or referring to a non-server computer at a customer service location is very different from a central server. Accordingly, Peters fails

to teach sending information regarding alarm states to an administration associated with a central server, as recited in ***claim 32*** (and as inherited by ***claim 33***, due to its dependence from claim 32). The assertions to the contrary are therefore erroneous.

Furthermore, the Examiner cites Peters col. 2, lines 16-28 as allegedly providing the motivation to combine Peters with the other base references. However, the cited text from Peters merely states that there is a need for security, diagnostics, etc. "in a system including plural vending machines interconnected via telephone lines to a host/central location...." Peters, col. 2, lines 26-28. This portion of the reference does not provide any motivation to combine the references in the context of Appellants Internet-based methods for distributing optical recorded media, and therefore the standards of Section 2143.01, as reiterated in *KSR*, have not been met for this particular rejection either. The cited "security" needs have nothing to do with the claims against which this rejection is asserted.

In addition, Appellants have provided ample evidence of secondary considerations to rebut even a proper *prima facie* case of obviousness. Appellants once again request the Board's careful consideration of this evidence, included in the attached Evidence Appendix.

Given the above reasons, Appellants submit that the Section 103 rejection of claims 32 and 33 is itself further deficient and has been overcome as well. Reversal of the rejection by this Board is therefore respectfully requested.

IX. THE REJECTION OF CLAIMS 34, 38-40 AND 70-71 BASED ON NEWELL, KANOH, HARMAN, SMITH, AND DeLAPA SHOULD BE REVERSED.

This Section 103 rejection once again lists only claims 34 and 38-40 in the summary rejection, but goes on to substantively discuss claims 70 and 71, despite the fact that Appellants have **repeatedly** pointed out this error to the Examiner. Given that this simple issue has been given no consideration by the Examiner, Appellants must also assume that no consideration has been given to Appellants' repeated more substantive traversals of this rejection either. Nevertheless, and purely out of an abundance of caution, the merits of claims 70-71 are also discussed herein.

Regarding the substance of this rejection, the Examiner correctly notes that Newell, Kanoh, Harman, and Smith do not generate automatic, individually targeted promotions at one or more kiosks. DeLapa alone is relied upon for somehow teaching this claimed feature. DeLapa, however, fails to read upon the present claims as asserted.

Appellants have previously and repeatedly pointed out to the Examiner that DeLapa specifically targets its coupons to *households*, which is different from targeting a promotion to an individual user. It is well-known in this field of art that different household members are likely to have significantly different tastes in movies, thus generating a household-targeted coupon to an individual does not insure that the coupon is appropriate for or acceptable to any particular individual within that household, for example. The Examiner provides no answer to this argument in the outstanding Office Action. The rejection merely repeats the previous rejection, except for the addition of Smith, but admits that Smith does teach or suggest the features that were specifically argued in traversal of the rejection. The failure to answer the substance of these arguments was thus further error.

Moreover, the asserted motivation for the proposed combination – "in order to develop promotional campaigns designed to encourage increased purchases among its frequent shoppers" (page 23 of Office Action, third full paragraph) – fails to address the issue of the combination itself. The expressed "motivation" is merely a stated goal entirely within the DeLapa framework, and there is no teaching or suggestion within DeLapa that its own internal goals should be or can be adapted to any of the other cited references, alone or in combination. By definition, every reference will indicate some motivation to employ *that particular reference*. The Examiner, however, was required to find a teaching or suggestion (or a well-known principle in the art) that would motivate one of ordinary skill to look beyond the teachings of that particular reference, and to combine it with the other cited references. In the present case, this requirement has not been met. The only evidence on the record to support the actual combination is thus the Examiner's own personal opinion, which is forbidden by *KSR*. The rejection is therefore deficient for at least these reasons.

Additionally, the rejection is further deficient for failing to first give any meaningful consideration to the Declaration and Exhibits submitted as evidence of secondary considerations. Although this evidence mainly addresses the case on rebuttal, the Examiner was still required to first consider the evidence before asserting *prima facie* obviousness, which was not done. Appellants thus respectfully request consideration of this evidence of secondary considerations of nonobviousness (Rule 132 Declaration, Exhibits, and pages 17-20 and 24 of the October 31, 2007 Response).

For at least these reasons, reversal by this Board of the Section 103 rejection of claims 34, and 38-40 (and potentially 70-71) is warranted, and respectfully requested.

X. THE REJECTION OF CLAIMS 35-37 BASED ON NEWELL, KANOH, HARMAN, SMITH, DeLAPA, AND McCALL SHOULD BE REVERSED.

Claims 35-37 stand rejected as being unpatentable over Newell in view of Kanoh, Harman, DeLapa, Smith, and further in view of McCall. Appellants again respectfully traverse this rejection. The Examiner admits that Newell, Kanoh, Harman, Smith, and DeLapa alone do not teach all of the features of these claims. McCall is relied upon for the missing feature of generating automatic promotions comprising the step of processing unique promotional codes.

In McCall, a determination is made as to whether a customer has earned a fuel discount. If so, the customer receives a bar coded discount coupon, an authorization code, or an updated magnetic card. (See Col. 10, lines 60-67). A server sends an authorization code and a discount amount to a pump. The customer then inputs the authorization code, swipes the card, scans in the updated card or scans the bar code. The server authorization code is compared with the code from the customer. If the codes match, the price of fuel is adjusted (i.e., reduced). (See Col. 11, lines 1-13). As can be seen from these teachings, the process is not automatic as required by the present claims, and the rejection is therefore deficient.

Additionally, the rejection is further deficient for failing to first give any meaningful consideration to the Declaration and Exhibits submitted as evidence of secondary considerations. Although this evidence mainly addresses the case on rebuttal, the Examiner was still required to first consider the evidence before asserting *prima facie* obviousness, which was not done. Appellants thus respectfully request consideration of this evidence of secondary considerations of nonobviousness (Rule 132 Declaration, Exhibits, and pages 17-20 and 24 of the October 31, 2007 Response). This evidence already of record may not be ignored simply because a "new" rejection has been raised post-appeal.

Accordingly, Appellants respectfully request reversal by this Board of the specific rejection of claims 35-37 as well.

XI. THE REJECTION OF CLAIM 41 BASED ON NEWELL, KANOH, HARMAN, SMITH, AND BERNSTEIN SHOULD BE REVERSED.

In this rejection, the Examiner admits that Newell, Kanoh, Harman, and Smith are silent with respect to administrating business data through a remote web interface. Bernstein alone is relied upon for allegedly disclosing such claim features. However, not only does Bernstein fail to teach or suggest such features, Bernstein cannot and does not overcome the

failure of the Newell/Kanoh/Harman/Smith combination to establish a *prima facie* case of obviousness over base claim 1, discussed above, from which claim 41 depends.

Bernstein merely discusses remotely modifying "[t]he GUI control software settings, the security control software settings and the browser settings of the kiosk system 20" Col. 6, lines 65-67. Appellant submits that updating software or browser settings is different from administering business data.

Furthermore, Bernstein fails to disclose or depict a kiosk managed by a server via the Internet. Rather, in Bernstein, it appears that the kiosk itself operates as a server when connected to a remote computer: "FTP server software executing on the microprocessor 30, which may be an additional module of the NetKey.TM. program, and FTP client software running on a remote computer can be used to transfer files from the remote host over a network to the kiosk system 20." (Bernstein col. 7, lines 4-8).

Thus, it is Bernstein's kiosk, and not the remote computer, that includes server software. The remote computer runs client software. On the other hand, claim 1 recites coupling one or more kiosks to a central server via the Internet, along with:

- Determining inventory of each kiosk, at the server;
- Routinely obtaining operational status of each kiosk, at the server;
- Automatically communicating between the kiosk and the server to authorize a transaction.

None of these additional features of claim 1 are taught or suggested in Bernstein. Given these reasons, Appellants respectfully submit that the Board should reverse this rejection, in addition to all others presented in the April 1, 2009 Office Action.

CLAIMS APPENDIX

Appellants enclose a copy of the claims involved in this appeal as an appendix hereto, on pages C1-C7.

EVIDENCE APPENDIX

Pursuant revised 37 C.F.R. 41.37, an Evidence Appendix is submitted herewith, following the Claims Appendix. The Evidence Appendix includes a copy of the '132 Declaration of Jens Horstmann (6 pages) and accompanying Exhibits (192 pages) as filed August 27, 2007, along with a statement as to where these papers are entered in the record. The Evidence Appendix also includes a copy of the Response filed October 31, 2007 (25 pages), which discusses the '132 Declaration and Exhibits at pages 11-17, and which presents additional secondary considerations of nonobviousness, at pages 17-20 and 24. The Evidence Appendix begins on page E-1 and includes 223 attached pages. The Evidence Appendix also includes copies of the following Internet publications, which were cited to the Examiner in the Response of October 31, 2007:

- "DVD," Consumer Electronics Association ©2007, at http://www.ce.org/Press/CEA_Pubs/929.asp
- Wikipedia's "Redbox" article at http://en.wikipedia.org/wiki/Redbox

The Evidence Appendix also includes a copy of Wikipedia's article at http://en.wikipedia.org/wiki/VoIP#History, which was cited in the Second Appeal Brief of June 9, 2008, after which the Examiner reopened prosecution.

RELATED PROCEEDINGS APPENDIX

Appellants submit herewith a Related Proceedings Appendix following the Evidence Appendix, as required pursuant revised 37 C.F.R. 41.37. The Related Proceedings Appendix is found on page R-1.

CONCLUSION

Appellants respectfully submit that the claims 1, 3-7, 9-21, 23-41, 63-68, and 70-71 are all patentably distinguishable over the cited prior art of record.

This Appeal Brief is timely filed within three (3) months of the mailing date of the non-final Office Action that reopened prosecution. Accordingly, the fees paid for the Notice of Appeal, filed April 8, 2008, and the Appeal Brief, filed June 9, 2008, apply to this submission. The Commissioner is hereby respectfully requested to charge to Deposit Account no. 12-0600 the combined $30.00 increase in Brief and Notice fees that were put into effect on October 2, 2008. The Commissioner is hereby further authorized to charge any additional fees which may be deemed necessary in this case, to make this paper both timely and complete, to Deposit Account no. 12-0600.

Respectfully submitted,

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CLAIMS APPENDIX TO APPEAL BRIEF

What is claimed is:

1. (Previously Presented) A method for distributing optical recorded media to and from users, comprising the steps of:

coupling one or more kiosks to a central server via the Internet, each of the kiosks containing a plurality of optical recorded media;

determining, at the server, inventory of the optical recorded media of each of the kiosks;

routinely obtaining, at the server, operational status of each of the kiosks;

automatically interfacing with a first user via a touch screen at a first kiosk in a first transaction for first local optical recorded media, the touch screen providing a touch-selectable listing of optical recorded media, including the first local optical recorded media, contained within the first kiosk, the first kiosk being one of the kiosks, the first user being one of the users;

automatically communicating between the first kiosk and the server to authorize the first transaction;

dispensing the first local optical media from the first kiosk to the first user if the first transaction is approved; and

accepting return of the first local optical media into rentable inventory of a second kiosk, the second kiosk being another one of the kiosks.

2. (Cancelled)

3. (Previously Presented) A method of claim 1, wherein the step of accepting return of the first optical media comprises the steps of capturing a digital image of a first code on the first optical media and scanning the image to determine a group identifier, the group identifier indicating which of the kiosks the first optical media may be returned to, and accepting the first optical media into rentable inventory of the second kiosk when the second kiosk is associated with the group identifier.

4. (Original) A method of claim 3, further comprising the steps of rotating the image, via internal software to the first kiosk, and rescanning the first code to determine the group identifier.

5. (Original) A method of claim 3, wherein the step of capturing a digital image comprises capturing a second code on the first optical media and scanning the image to determine a disk identifier, the disk identifier uniquely identifying the first optical media, and reporting inventory of the first optical media to the central server if the first optical media is accepted at the second kiosk.

6. (Original) A method of claim 5, further comprising the steps of rotating the image, via internal software to the first kiosk, and rescanning the second code to determine the disk identifier.

7. (Original) A method of claim 3, wherein one or both of the first code and second code comprise a bar code.

8. (Cancelled)

9. (Previously Presented) A method of claim 3, wherein the step of accepting return of the first optical media into rentable inventory of the second kiosk comprises the steps of sensing characteristics of a case housing the first optical media, determining if the characteristics match predetermined characteristics associated with the second kiosk, and opening a door to an input/output slot of the second kiosk to accept the case and optical media when the characteristics match the predetermined characteristics.

10. (Original) A method of claim 9, wherein the predetermined characteristics are defined by physical structure of the case.

11. (Original) A method of claim 10, wherein the physical structure forms one or more holes and one or more blocked regions in the case, and wherein the step of sensing characteristics comprises sensing the holes and blocked regions.

12. (Previously Presented) A method of claim 1, determining inventory at the server comprising tracking inventory movement of the first optical media between the first kiosk and the second kiosk.

13. (Original) A method of claim 1, further comprising the steps of obtaining and storing one or more images through an image capturing device located within, or in proximity to, the first kiosk.

14. (Original) A method of claim 13, wherein the step of obtaining comprises the step of imaging a person proximal to the first kiosk.

15. (Original) A method of claim 13, wherein the step of obtaining comprises the step of imaging a person interacting with the first kiosk.

16. (Original) A method of claim 13, wherein the step of obtaining comprises the step of imaging a person conducting a user identification or credit card input at the first kiosk.

17. (Original) A method of claim 13, further comprising the step of transmitting the images to the central server.

18. (Previously Presented) A method of claim 1, further comprising the steps of:

automatically interfacing with a second user at a second kiosk in a second transaction for second local optical recorded media, the second local optical media contained within the second kiosk, the second kiosk being one of the kiosks and not the first kiosk, the second user being one of the users;

automatically communicating between the second kiosk and the server to authorize the second transaction; and

dispensing the second local optical media to the second user, at the second kiosk, if the second transaction is approved.

19. (Original) A method of claim 18, further comprising the step of managing the first and second kiosks from the central server.

20. (Original) A method of claim 18, further comprising the steps of communicating advertising information from the server to a third kiosk, the third kiosk being one of the kiosks, and communicating the advertising information to users at the third kiosk.

21. (Original) A method of claim 20, wherein the step of communicating the advertising information comprises one of (a) displaying the information on a screen at the third kiosk and (b) audibly communicating the information to the users through speakers at the third kiosk.

22. (Cancelled)

23. (Original) A method of claim 1, further comprising the step of backing up at least part of information stored in the central server within internal memory within the first kiosk.

24. (Previously Presented) A method of claim 1, further comprising the steps of profiling user transactions at the second kiosk and communicating advertising information at the second kiosk based on the profiling of user transactions.

25. (Previously Presented) A method of claim 1, further comprising the steps of profiling user transactions at the first kiosk and communicating advertising information at the first kiosk based on the profiling of user transactions.

26. (Original) A method of claim 1, further comprising the step of managing a group of kiosks through the central server via a personal computer connected to the Internet, the group of kiosks being a subset of all the kiosks.

27. (Previously Presented) A method of claim 26, wherein the step of managing the group of kiosks comprises managing advertising information communicated to users at any of the kiosks within the group of kiosks.

28. (Original) A method of claim 26, further comprising determining inventory at any of the kiosks within the group of kiosks.

29. (Previously Presented) A method of claim 1, the step of determining comprising determining inventory of each of the kiosks via Internet access through the central server.

30. (Original) A method of claim 29, further comprising the step of emailing discount coupons to the first user through the Internet and based on the inventory.

31. (Previously Presented) A method of claim 1, the step of routinely obtaining comprising identifying one or more alarm states associated with the first kiosk.

32. (Original) A method of claim 31, further comprising the steps of automatically identifying the alarm states and automatically sending information about the alarm states to an administration associated with the central server.

33. (Previously Presented) A method of claim 32, further comprising the step of communicating one or both of voice and text messages to the administration as a message communicated by one or more of email and a mobile phone, pager or other wireless device.

34. (Previously Presented) A method of claim 1, further comprising the step of generating automatic, individually-targeted promotions at one or more of the kiosks.

35. (Previously Presented) A method of claim 34, wherein the step of generating automatic, individually-targeted promotions comprises the step of processing unique promotion codes.

36. (Previously Presented) A method of claim, 35, wherein the step of processing unique promotion codes comprises the step of obtaining the promotion codes from the touch screen at the first kiosk.

37. (Original) A method of claim 35, wherein the step of processing unique promotion codes comprises the step of obtaining the promotion codes from a magnetic card swipe through a reader at the first kiosk.

38. (Previously Presented) A method of claim 1, further comprising the step of distributing an individually-targeted coupon to one or more users of the system.

39. (Previously Presented) A method of claim 38, wherein the step of distributing an individually-targeted_coupon further comprises the step of distributing a coupon to a user of the first kiosk.

40. (Previously Presented) A method of claim 39, wherein the step of distributing an individually-targeted coupon to a user comprises the step of distributing a coupon activated by a transaction at the first kiosk.

41. (Original) A method of claim 1, further comprising the step of administering kiosk business data through a remote web-interface.

42-62. (Cancelled)

63. (Previously Presented) A method for distributing optical recorded media to and from users, comprising the steps of:

coupling a plurality of kiosks to a central server via the Internet, each of the kiosks configured to dispense a plurality of optical recorded media;

determining, at the server, inventory of the optical recorded media of each of the kiosks;

routinely obtaining, at the server, operational status of each of the kiosks;

automatically interfacing with a first user via a touch screen at a first kiosk in a first transaction for first local optical recorded media, the touch screen providing a touch-selectable listing of optical recorded media, including the first local optical recorded media, contained within the first kiosk, the first kiosk being one of the kiosks, the first user being one of the users;

automatically communicating between the first kiosk and the server to authorize the first transaction;

dispensing the first local optical media to the first user if the first transaction is approved; and

accepting return of the first local optical media into rentable inventory of a second kiosk, the second kiosk being one of the kiosks.

64. (Previously Presented) A method of claim 63, wherein the step of accepting the first optical media into rentable inventory of the second kiosk comprises the steps of capturing a digital image of the first optical media.

65. (Original) A method of claim 64, further comprising the step of electronically scanning the image to decode one or more bar codes on the first optical media to determine an identifier of the first optical media.

66. (Previously Presented) A method of claim 63, determining inventory at the server comprising tracking inventory movement of the first optical media between the first kiosk and the second kiosk.

67. (Previously Presented) A method of claim 63, further comprising communicating advertising information from the server to any of the plurality of kiosks, to communicate advertising information to the users.

68. (Original) A method of claim 63, further comprising the steps of profiling user transactions at one of the kiosks and communicating advertising information to the kiosk based on the profiling.

69. (Cancelled)

70. (Previously Presented) A method of claim 63, further comprising the step of generating automatic, individually-targeted promotions at one or more of the kiosks.

71. (Original) A method of claim 63, further comprising the step of distributing a coupon to a user.

72-73. (Cancelled)

EVIDENCE APPENDIX TO APPEAL BRIEF

Pursuant to 37 C.F.R. 41.37 (c)(1)(ix), this Evidence Appendix includes a copy of the 37 C.F.R. §1.132 Declaration of Jens Horstmann (6 pages) and accompanying Exhibits (192 pages), along with a copy of the Response filed October 31, 2007 (25 pages). The '132 Declaration and Exhibits were entered in the record on October 31, 2007, and are viewable in the PAIR system as "Rule 130, 131 or 132 Affidavits" under the Image File Wrapper for the '444 Application. The Response of October 31, 2007 was entered into the record on October 31, 2007, and is viewable in the PAIR system as "Amendment Submitted/Entered with Filing of CPA/RCE," "Claims" and "Applicant Arguments/Remarks Made in an Amendment."

The Evidence Appendix also includes copies of the following Internet publications, which were cited to the Examiner in the Response of October 31, 2007:

- "DVD," Consumer Electronics Association ©2007, at http://www.ce.org/Press/CEA_Pubs/929.asp
- Wikipedia's "Redbox" article at http://en.wikipedia.org/wiki/Redbox.

The Evidence Appendix also includes a copy of Wikipedia's article at http://en.wikipedia.org/wiki/VoIP#History, which was cited in the Second Appeal Brief of June 9, 2008, after which the Examiner reopened prosecution. The Second Appeal Brief was entered into the record on December 18, 2008 and is viewable in the PAIR system as "Appeal Brief," marked with the December 18, 2008 date.

This Evidence Appendix begins on page E-1 and includes 242 attached pages.

ATTACHMENTS: 242 PAGES

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): William H. Barber et al.	Group Art No.: 3627
Serial No.: 09/903,444	Examiner: Sheikh, Asfand M.
Filed: 09 July 2001	Conf. No.: 9729
For: SYSTEM AND KIOSK FOR COMMERCE OF OPTICAL MEDIA THROUGH MULTIPLE LOCATIONS	

MAIL STOP RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION OF JENS HORSTMANN UNDER 37 CFR §1.132

Dear Sir:

I, Jens Horstmann, declare that:

1. I am Vice President and Chief Technology Officer of DVDPlay, Inc., of Campbell, California, which manufactures systems for dispensing optical storage media from a kiosk (hereinafter, "DVDPlay systems"), according to the disclosure and claims of U.S. patent application serial no. 09/903,444, filed 09 July 2001 and entitled SYSTEM AND KIOSK FOR COMMERCE OF OPTICAL MEDIA THROUGH MULTIPLE LOCATIONS (hereinafter, "the '444 application"). The '444 application is a continuation-in-part of U.S. patent application serial no. 09/578,631, filed 25 May 2000 and entitled DISK DISPENSING AND RETRIEVAL SYSTEM AND ASSOCIATED METHODS (hereinafter, "the '631 application"), which claims priority of U.S. provisional patent application serial no. 60/135,854, filed 25 May 1999 ("the '854 provisional"), and U.S. provisional patent application serial no. 60/143,601, filed 13 July 1999 ("the '601 provisional").

2. The full right, title, and interests in and to the '444 application are accorded to DVDPlay, Inc. (formerly, FreeFlyr, Inc.), by way of assignments executed on 09 July 2001 and recorded by the USPTO Assignment Division on 21 January 2005, at reel/frame 015589/0542.

3. I am familiar with the official Office Action dated 03 May 2007 in the '444 application and I have reviewed the prior art references cited therein. For example, I have reviewed the following U.S. Patents and published applications:

U.S. Pat. No. 5,159,560 issued to Newell et al. (hereinafter, "Newell");
U.S. Pat. No. 5,934,439, issued to Kanoh et al. (hereinafter, "Kanoh");
U.S. Pat. No. 5,095,195, issued to Harman et al. (hereinafter, "Harman");
U.S. Pat. No. 6,688,523, issued to Koenck (hereinafter, "Koenck");
U.S. Pat. No. 4,608,679, issued to Rudy et al. (hereinafter, "Rudy");
U.S. Pat. No. 6,119,932, issued to Maloney et al. (hereinafter, "Maloney");
U.S. Pat. No. 6,513,015, issued to Ogasawara et al. (hereinafter, "Ogasawara");
U.S. Pat. No. 6,965,869, issued to Tomita et al. (hereinafter, "Tomita");
U.S. Pat. Application Publication No. 2004/0064371 by Crapo (hereinafter, "Crapo");
U.S. Pat. No. 5,769,269, issued to Peters (hereinafter, "Peters");
U.S. Pat. No. 6,954,732, issued to DeLapa et al. (hereinafter, "DeLapa");

U.S. Pat. No. 6,493,110, issued to Roberts (hereinafter, "Roberts"); and
U.S. Pat. Application Publication No. 2001/0037207 by Dejaeger (hereinafter, "Dejaeger ").

A. The Market

4. The DVD rental machine market is shared between DVDPlay, Inc., Redbox Automated Retail, LLC (hereinafter, "Redbox,"), The New Release™ (hereinafter, "TNR"), DVDXpress, and other smaller competitors. To date, DVDPlay, Inc. has deployed about 1,300 DVDPlay systems. Deployment of DVD rental machines by competitors of DVDPlay, Inc. is estimated as follows: Redbox has deployed about 4,200 DVD rental machines, TNR has deployed about 2,000 DVD rental machines, DVDXpress has deployed about 350 rental machines and the other, smaller competitors, combined, have deployed about 300 machines. The DVD rental machine market is expected to net up to $1 billion in the next few years. See, e.g., "Automated for the People," Exhibit A, pp. A1-A8; see also "Self-Serve Movie Rental Kiosks...", Exhibit A pp. A9-A10.

B. Commercial Success of DVDPlay Systems

5. The DVDPlay systems have enjoyed considerable commercial success in the DVD rental kiosk market. DVDPlay, Inc., sold about 20 DVDPlay systems to DVDXpress (a franchise operator) in January of 2002. Throughout 2002 and 2003, additional DVDPlay systems were offered to franchisees and tested throughout the U.S., including New York, North Carolina, Texas and California. See, e.g., Exhibit B articles at pp. B3-B10.

In September-December of 2003, Redbox (then a division of McDonald's) entered into agreements with DVDPlay, Inc., and tested about 20 DVDPlay systems in McDonald's restaurants in Washington, D.C. and Las Vegas, Nevada. See, e.g., Exhibit B, pp. B13-B15. The DVDPlay systems were met with an "incredibly positive" response. Exhibit B, p. B17, penultimate ¶. In May-July of 2004 (under terms of a further agreement signed by DVDPlay, Inc. and Redbox in April of 2004), Redbox launched DVDPlay systems in 104 McDonald's locations throughout Denver, Colorado. See, e.g., reference at Exhibit B, p. B23, ¶2. DVDPlay, Inc. began shipping DVDPlay systems to U.S. military bases through operator Tejas Videos, Inc., in July of 2004. By this date, DVDPlay, Inc. had installed over 500 DVDPlay systems in 33 states and in Canada. See Exhibit B pp. B24-B25. Revenue from the DVDPlay systems was about $4 million in 2004.

DVDPlay, Inc. experienced 200% growth in movie rentals in 2005, as compared to a 14% growth rate of the overall DVD rental market. By January 17 of 2006, more than 4 million movies had been rented from the DVDPlay systems. See Exhibit B, p. B26. Less than six moths later, by June 28, 2006, 5 million movies had been rented from the DVDPlay systems. See Exhibit B, p. B30. During the summer of 2006, DVDPlay, Inc. raised more than $20 million in new financing. See Exhibit B, pp. B28-B29. DVDPlay, Inc. has been awarded the 2007 North American DVD Rental Market Product Innovation of the Year Award for 2007. See Exhibit B, pp. B68-B78.

By March of 2007, Genuardi's markets installed DVDPlay systems in Philadelphia-area stores and Dominick's had installed DVDPlay systems in about half of its 83 Chicago-area stores. See Exhibit B, pp. B31-B33. By May of 2007, DVDPlay, Inc. had deployed about 1,200 DVDPlay systems throughout U.S. grocery stores, including Safeway and affiliates Albertson's and Kroegers. See Exhibit B, pp. B35-36. In June of 2007, DVDPlay kiosks were named as one of the Valley's Top Ten Bargains, by the San Jose Mercury News. See Exhibit B, p. B59, under "Goods and Services". By July of 2007, DVDPlay, Inc. had deployed kiosks in Vons grocery stores. See Exhibit B, p. B61. It is projected that 2,250 DVDPlay systems will be installed throughout the U.S. and Canada by the end of 2007. See Exhibit B, pp. B37-B38; see also pp. B63-B64, noting that

"basically every store (in Canada) with a few exceptions will have the [DVDPlay] machines." p. B63, ¶4.

DVDPlay, Inc. currently holds 16-20% of the movie rental kiosk market, which is expected to net about $120 million or more, in 2007. DVDPlay, Inc.'s revenue for 2007 is expected to be about $18 million. DVDPlay, Inc.'s commercial success has been noted by competitors, including indirect competitors such as Netflix, which referenced DVDPlay, Inc.'s positive growth rate in its second quarter, 2007 earnings call. See Exhibit B, p. B48. In September of 2007, DVDPlay, Inc. rented its 10 millionth DVD. See Exhibit B, p. B79.

6. DVDPlay, Inc.'s systems have been selected over competitive movie vending kiosks by companies such as Safeway and its Alliance Partners Stores; Automated Media Systems, Inc.; Capitol DVD; DVD 123, LLC; DVDDirect, LLC; DVDPartners, Inc.; DVDXpress (Video Vending NY, Inc.); Lantec Investment Group, LLC; OnLocation Media Group, Inc.; ThePlayGroup, L.P.; Speedy DVD, LLC; SunStar Communications, Inc.; Tejas Videos, LLC.; TxVend Management LLC; Vendflix, LLC; Video II, and Woodland AEM, LLC, in addition to those mentioned in number 5, above. In addition, individuals and small entities (i.e., franchisees) have, in some cases, waited up to a year and a half for a DVDPlay system, despite availability of machines provided by the competitors listed in number 4, above.

7. The success of the DVDPlay systems is directly tied to claimed features, in particular, the claimed combinations of features, in the '444 application.

a) For example, as in claim 1 of the '444 application, DVDPlay systems operate according to a method for distributing optical recorded media to and from users, including coupling one or more kiosks to a central server via the Internet. See, e.g., Exhibit B, pp. B1, ¶2-3 and 6; B7, last ¶; B11, last ¶; B25, ¶2; B26, ¶1. See also letter from Tejas Videos CEO, noting the "huge benefit" of Internet connectivity, Exhibit B, p. B80, ¶3. Each kiosk contains a plurality of optical recorded media. See, e.g., Exhibit B, pp. b1, ¶8; B26, ¶5, B30, ¶4. See also Exhibit C, pp. C2-C3 and C11. Inventory of the optical recorded media of each of the kiosks is determined at the server and operational status of each of the kiosks is routinely obtained at the server. See, e.g., Exhibit B, pp. B1, ¶7; B9, ¶1; B11, ¶¶2 and 6; B20, ¶10; B25, ¶1; B27, ¶1, B80, ¶2 noting reduced costs "due to the ability to remotely manage tasks from one centralized location." The method also includes the step of automatically interfacing with a first user via a touch screen at a first of the kiosks, in a first transaction for first local optical recorded media. See, e.g., Exhibit B, p. B11, ¶5 description of "fully-automated touch-screen interface," see also pp. B1, ¶8; B4, ¶5; B11, ¶5. See also Exhibit C, pp. C1-C5 and C7. The touch screen provides a touch-selectable listing of optical recorded media, including the first local optical recorded media, contained within the first kiosk. See, e.g., Exhibit C, pp. C1-C5 and C7. The first kiosk and the server automatically communicate to authorize the first transaction. See, e.g., Exhibit B, p. B11, especially ¶6 noting intelligent backend that communicates with kiosk and manages credit transactions. See also Exhibit B, p. B9, ¶1; Exhibit C, pp. C6-C9. The first local optical media is dispensed from the first kiosk to the first user if the first transaction is approved. See, e.g., Exhibit C, pp. C6-C9. The method also includes the step of accepting return of the first local optical media into rentable inventory of a second of the kiosks. See, e.g., Exhibit B, pp. B13, ¶2; B15, ¶4; B24, 3; B26, ¶4, noting that "All returned movies are instantly available for re-rental"; B37, ¶2. See also letter from Tejas Videos' CEO, stating that returning to another kiosk is "a huge benefit", Exhibit B, p. B80, ¶3.

b) As in claim 63 of the '444 application, the DVDPlay system operates according to a method for distributing optical recorded media to and from users. A plurality of kiosks are coupled to a central server via the Internet, each of the kiosks configured to dispense a plurality of optical recorded media. See, e.g., Exhibit B, pp. B1, ¶2-3 and 6; B7, last ¶; B11,

last ¶; B25, ¶2; B26, ¶1; B80, ¶2. Each kiosk contains a plurality of optical recorded media. See, e.g., Exhibit B, pp. b1, ¶8; B26, ¶5, B30, ¶4. See also Exhibit C, pp. C2-C3 and C11. Inventory of the optical recorded media of each of the kiosks is determined at the server, and operational status of each kiosk is routinely obtained at the server. See, e.g., Exhibit B, pp. B1, ¶7; B9, ¶1; B11, ¶¶2 and 6; B20, ¶10; B25, ¶1; B27, ¶1; B80, ¶4. The DVDPlay system automatically interfaces with a first user via a touch screen at a first of the kiosks, in a first transaction for first local optical recorded media. See, e.g., Exhibit B, p. B11, ¶5 description of "fully-automated touch-screen interface," see also pp. B1, ¶8; B4, ¶5; B11, ¶5. See also Exhibit C, pp. C1-C5 and C7. The touch screen provides a touch-selectable listing of optical recorded media, including the first local optical recorded media, contained within the first kiosk. See, e.g., Exhibit C, pp. C1-C5 and C7. The DVDPlay system automatically communicates between the first kiosk and the server to authorize the first transaction. See, e.g., Exhibit B, p. B11, especially ¶6 noting intelligent backend that communicates with kiosk and manages credit transactions. See also Exhibit B, p. B9, ¶1; Exhibit C, pp. C6-C9. If the first transaction is approved, the first local optical media is dispensed to the first user. See, e.g., Exhibit C, pp. C6-C9. Upon return, the first local optical media is accepted into rentable inventory of a second of the kiosks. See, e.g., Exhibit B, pp. B13, ¶2; B15, ¶4; B24, 3; B26, ¶4, noting that "All returned movies are instantly available for re-rental"; B37, ¶2; B80, ¶3 noting the "huge benefit" of accepting returns at a second kiosk.

8. In my role as Vice President and Chief Technology Officer of DVDPlay, Inc., I have overseen marketing research in the United States and abroad, concerning systems for dispensing optical storage media from a kiosk. This research has included visiting and/or contacting marketing officials of retail establishments including (but not limited to) Alliance Partner Stores; Blackhawk Marketing, LLC; McDonald's Ventures, LLC (a wholly owned subsidiary of McDonald's Corporation), Coinstar, Inc. and Redbox (a joint venture between Coinstar and McDonald's Ventures, LLC). Prior to my visits and/or contacts, none of these merchants had ever installed, or heard of, any type of system for dispensing optical storage media from a kiosk that included the claimed combination of the '444 application.

In addition, several competitors have approached DVDPlay, Inc. proposing investment in exchange for DVDPlay, Inc.'s proprietary information. For example, representatives from the Italian company HEN srl - Kinetics Technology visited DVDPlay, Inc. in the spring of 2004. Also in the spring of 2004, Paulo Consiglio of Riello Technoware, Italy, met with DVDPlay, Inc. to discuss investment in DVDPlay, Inc. and/or licensing of technology pertinent to the DVDPlay systems. TNR met with DVDPlay, Inc. and indicated a desire to license the DVDPlay system in the spring of 2006. ELO Media of New Jersey discussed structuring a deal with DVDPlay, Inc. at least once, during informal meetings at trade shows.

C. Copying By Others

9. In August of 2003, Redbox visited DVDPlay, Inc., then in Los Gatos, California, after several attempts to break into the movie vending kiosk market with machines by companies such as TikTok and YAF. In September of 2003, Redbox signed a test agreement with DVDPlay, Inc. for 10 of the DVDPlay systems in Washington, DC. See number 5, ¶2, above.

10. In October of 2003, after successful testing in Washington, DC, Redbox engaged in contract negotiations with DVDPlay, Inc. for a higher capacity machine (A350). In April of 2004 Redbox and DVDPlay, Inc. signed a contract (won over prior vendor YAF), and DVDPlay, Inc. was paid for development and intellectual property contributions. In July of 2004, Redbox launched 177 DVDPlay systems in 104 locations throughout Denver, Colorado. Following this test,

Redbox directed DVDPlay, Inc. to build another version of the DVDPlay system, incorporating the features claimed in the '444 application.

11. In September of 2004, McDonald's Ventures, LLC suggested a merger of DVDPlay, Inc. and Redbox; DVDPlay, Inc. and McDonalds began negotiations. At this time, DVDPlay, Inc. was also discussing agreements with or acquisition by companies such as Blockbuster, Inc. and Hollywood Entertainment Corporation. DVDPlay, Inc. later discovered that Redbox and/or McDonald's Ventures, LLC had also engaged Solectron to build a movie vending kiosk. I believe that the arrangement with Solectron resulted from McDonald's Ventures, LLC's concerns over potential competitive agreements with Blockbuster, Inc. or Hollywood Entertainment Corporation.

12. In January of 2005, merger documents were finalized and ready for signature. Outside investors U.S. Venture Partners and GRP submitted a $30 million term sheet for the new (merged) company. See redacted e-mail referencing term sheet at Exhibit D, pp. D1 and (particularly) D2. However, on January 28, 2005, McDonald's called off the merger deal. See redacted e-mail from McDonald's Corporation, Exhibit D, pp. D3-D5. This was followed by an official letter on January 31, 2005.

13. In the spring of 2005, Redbox/McDonald's deployed the first Solectron machines in Houston. DVDPlay, Inc. photographed these machines and found similarities between the DVDPlay systems, as claimed, and the Solectron machines. DVDPlay, Inc. believes that Solectron copied claimed features of the DVDPlay systems (which were in the possession of Redbox/ McDonald's), such as the combinations of the '444 application. See, e.g., Exhibit D comparison of flow and screen shots between the DVDPlay systems and the Solectron machine, pp. D6-D15. See also Exhibit E, pp. E4, ¶4 for Redbox's description of touch screen and credit-card rental; E9, ¶1 for Redbox reference to returning rented items to any kiosk.

14. See reference to ease of touch screen rental at ¶5. See p. E4, ¶4 touting convenience of credit-card rental and touch screen. See also p. E6, wherein Redbox's CEO states "Redbox's proven technology and unmatched value and convenience have allowed us to expand at an incredible rate", and consider the aforementioned Exhibit E paragraphs citing features claimed by DVDPlay, Inc. (i.e., return at any location, touch screen, credit card transactions) as convenience/ease factors. Further note the inaccurate statement by Redbox's CEO that returning to any kiosk is "unique to Redbox." at p. E9, ¶1.

15. Copying was of such concern that the terms of a November 17, 2005 LLC Interest Purchase Agreement between Coinstar, Inc., Redbox and McDonald's Ventures, LLC included a clause indemnifying Coinstar against any and all losses arising out of a breach of Redbox/McDonald's (referred to as "Ventures") representation and warranty that Redbox IP did not infringe or constitute misappropriation of any claim of any DVDPlay, Inc. patent issued on or granted from the '444 application. See Exhibit D copy of FORM 8-K S.E.C. report by Coinstar, Inc. See especially Representations and Warranties at pp. D39 (item (c)) and D40 (item (d)), Indemnification at p. D55.

D. Commercial Success of Others Due to Copying DVDPlay Systems

16. Redbox is the largest supplier within the DVD rental kiosk market. See number 4, above. DVDPlay, Inc. believes that Redbox copied claimed features of the DVDPlay systems after purchasing and experimenting with the DVDPlay systems (see "Copying by Others, above). In particular, DVDPlay, Inc. believes that Redbox copied the combination of claims 1 and 63. Prior to DVDPlay, Inc.'s '444 application and/or the parents to which the '444 application claims priority (the '631 application, the '854 provisional and the '601 provisional), this combination was not known (note, for example, that the Examiner of the '444 application does not find this combination

in any of 13 references currently cited against the '444 application in accordance with 35 U.S.C. §103).

17. After the filing of the '444 application and the parent '631 application, the DVD kiosk rental market experienced explosive growth, as evidenced by DVDPlay, Inc.'s own commercial success and the commercial success of competitors such as Redbox. See Exhibits A and B and Exhibit E, which provides several articles evidencing commercial success of Redbox. Also after the filing of the '444 application, the vast majority of machines in the kiosk rental market utilize the combination of features claimed in the '444 application. These factors evidence a direct nexus not only between the claims of the '444 application and commercial success of DVDPlay, Inc., but also between the claims of the '444 application and the increased commercial success of the DVD kiosk rental market, since the filing of the '444 application. See, e.g., Exhibit D p. D63 article regarding Redbox's success in renting over 3 million DVDs and noting "Customers have enthusiastically embraced the…convenient return options and easy self-service operation of the kiosk." See also Exhibit E p. E2 regarding Redbox's 38 million rental mark and again linking "rent-and-return anywhere policy" with growth, at ¶1. See reference to case of touch screen rental at ¶5. See p. E4, ¶4 touting convenience of credit-card rental and touch screen. See also p. E6, wherein Redbox's CEO states "Redbox's proven technology and unmatched value and convenience have allowed us to expand at an incredible rate", and consider the aforementioned Exhibit E paragraphs citing features claimed by DVDPlay, Inc. (i.e., return at any location, touch screen, credit card transactions) as convenience/ease factors. Further note the inaccurate statement by Redbox's CEO that returning to any kiosk is "unique to Redbox." at p. E9, ¶1; see also p. E16, ¶2 for return anywhere option. See also article regarding success of DVD rental dispensers at Exhibit B, pp. B65-B67, particularly, statement by chief executive of DVDNow Kiosks, noting "[T]here's no question that Red Box and DVDPlay are experiencing phenomenal results, with growth many, many times the industry average of a traditional video store," Exhibit B, p. B66, third paragraph from bottom.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that the statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the Application or any patent issued thereon.

Respectfully submitted,

J. Horstmann

Jens Horstmann

Oct 30th, 2007

Date

EXHIBIT A

TO THE
§1.132 DECLARATION OF JENS HORSTMANN

U.S. Serial No. 09/903,444

Automated for the people.

From: **Video Business** Date: **August 28, 2006** Author: **Ault, Susanne** More results for: **Coinstar call DVDPlay**

CWI By Susanne Ault

Catching on, DVD rental kiosks could capture $1 billion in the next few years

After years of failed attempts, DVD rental kiosks are now flourishing in the U.S. Providers of these machines estimate that within the next couple of years, this business could equal 10% to 15% of the entire rental industry, or more than $1 billion.

Europe, with its land space constraints, has enjoyed an established kiosk market for years.

But the U.S. is finally starting to catch up as restaurants and grocery stores seek new profit streams from DVD. Also, customers increasingly want to multi-task, renting movies while buying a hamburger or gallon of milk, instead of making an extra stop at a traditional video store.

"I think it's a combination of things that is all working in our favor at the same

time," says Greg Waring, VP of marketing at dominant kiosk company Redbox, which is co-owned by McDonald's and **Coinstar**. "There is growing customer comfort with automated technology in general. About 65% of airline customers check in at terminal kiosks. And it's an unbeatable price point."

Redbox, The New Release (TNR) and **DVDPlay** are all in the middle of impressive growth spurts. These firms charge $1 to $1.50 per night for new release DVD rentals, which is half the cost of per night pricing at many video stores.

Now at 1,300 U.S. spots, Redbox will expand this year into two additional McDonald's markets, Seattle and Oklahoma City, and has set a goal of 20,000 restaurant and grocer locations worldwide in the next five years.

Currently nearing 1,000 locations, TNR expects to push into Kroger's supermarkets nationwide, with plans to reach 3,000 total spots by 2007.

DVDPlay machines number 500 and will roll into 1,600 Safeway grocery stores by the middle of 2007.

Even Movie Gallery has dabbled in the business, testing 25 Hollywood Video Express kiosks in supermarkets. Though chairman and CEO Joe Malugen said during a recent conference **call** with financial analysts that the video chain has no plans to expand the test yet, he indicated the company is "optimistic" about its prospects.

"I think the rental market is going to be very strong in the future," TNR founder and president John Osborne says. "As these new models emerge, we'll be a key driver of the rental market."

With their machines' armor-like infrastructure, TNR and other kiosk providers help to eliminate inventory theft.

These machines are replacing grocers' traditional DVD sections, which have been limited because of theft concerns and personnel costs.

"At grocery, DVDs are the biggest things that are targeted [for theft]," Osborne says. "So any idea that comes along will be welcomed."

Kiosk companies generally shoulder the expenses of installing and supervising machines, which can cost around $10,000 to build, against a revenue-sharing agreement with the host retailer. DVD rental machine companies additionally will pay retailers for the use of their floor space.

Grocers are growing fond of kiosks because their stores typically earn double-digit profits on kiosk transactions while giving up as little as five square feet of valuable store real estate. Most food products, to which grocers must grant the largest display area, generate single-digit profits.

Restaurants also appreciate the hike in store traffic.

Redbox studies show that introducing a machine at a McDonald's tends to beef up that outlet's food revenue, as customers look for entertainment at night, typically the chain's weakest part of the day.

"We are bringing customers into these locations who wouldn't have otherwise visited," says Redbox's Waring. "With grocery, they can convert [former DVD section space] to support some other merchandise."

Redbox recently surpassed 17 million rentals across its machine network and is proving to be a formidable DVD competitor. When it moves into any given McDonald's market, Redbox usually equips enough restaurants with machines to become that city's most prevalent disc rental service. In Houston, Redbox machines are in 180 McDonald's locations, which is far more

outlets than Blockbuster has in the same area.

Redbox rivals TNR and **DVDPlay** believe there is plenty of room for more than one rental machine company.

DVDPlay is already eyeing expansion opportunities at rival fast food companies, because Redbox is unlikely to press into outlets competitive with McDonald's.

"There are places that Redbox can't go," **DVDPlay** CEO Chuck Buerger says. "Also for retailers, we offer a 26-inch flat screen on top of each unit that stores can use to advertise [offerings]."

Similarly, TNR is banking on its own distinguishing characteristic, offering relatively more title selection at each machine, to drive business.

TNR stocks 200 to 250 DVD titles, including catalog films, at each location. Redbox and **DVDPlay** offer just the top new release DVD titles, 50 and 35, respectively, at each kiosk.

However, Redbox is increasingly localizing its content offerings, with Mexican cinema making up a big part of the Houston market inventory, for example.

Although rental makes up kiosk companies' core trade, sell-through operations are quickly getting implemented. Redbox has yet to permanently commit to sell-through at all its locations but recently sold Buena Vista Home Entertainment's Lady and the Tramp and The Chronicles of Narnia: The Lion, the Witch and the Wardrobe at a number of McDonald's kiosks.

"We can tailor the inventory right down to the machine level," says Waring. "And we can make sure we satisfy consumer tastes at every one of the machines."

Extra coin in e-cards

Susanne Ault

Coinstar, best known for its coin-counting kiosks at 12,000 drug, grocery and bank outlets, wants to show retailers it doesn't just bring in small change. The company is in the middle of a major campaign to convince retailers to beef up their ancillary front-of-store offerings, including electronic gift cards sold on racks near check-out and activated with **Coinstar** technology.

At a grocery location, **Coinstar** says a coin converter can generate an extra $1,500 to $1,800 in annual net income per store; toy/candy vending, $1,000 to $3,000; and e-payment cards $1,500 to $3,700.

However, **Coinstar** won't install its machines, which also include Redbox DVD kiosks co-owned with McDonald's, unless it has been guaranteed adequate store space and foot traffic. Retailers of any size, however, can carry **Coinstar**'s pre-paid gift card selection.

Wireless airtime and branded retail gift cards are among the offered items, which can be displayed on a rack near check-out. Retail brands include Starbucks, iTunes, Amazon.com and Eddie Bauer. **Coinstar** also offers cards worth wireless airtime with such carriers as Cingular, T-Mobile and Verizon. **Coinstar** technology is responsible for activating the cards once customers buy them.

Launched by **Coinstar** two years ago, these e-payment services are currently found in 20,000 retail locations.

"E-payment can really live in any space," says Gretchen Marks, **Coinstar** VP of marketing. "There would be revenue-sharing with the retailer."

These card services, which also can be bundled with an advanced **Coinstar** coin-counting kiosk, are proving to be popular.

"I would definitely say that gift cards are

very hot right now," Marks says. "A lot of different retailers are interested in having branded cards for the holidays. And it can fit in the square footage [typical] of the video store environment."--S.A.

Retailers revamp stations

Susanne Ault

Retailers are jumping on technological advances to make kiosks and sampling stations work harder in their stores. This year, 20 to 25 stores owned by Trans World will be installed with Mix & Burn kiosks, which let shoppers test music and create custom CDs. Mix & Burn will implement in-store music downloading on personal media devices by year-end. Video downloading opportunities also are being explored.

Meanwhile, Polar Frog Digital is one of the first companies set to bow an in-store download-to-burn DVD machine. Set for grocer Sprouts in October, each machine will offer 700 to 1,000 pieces of content, including feature films from indie Hart Sharp Video.

"It's instant gratification and the world we live in now," says Polar Frog CEO Todd Rosenbaum. "It has created this demand of convenience from the next [shopping] generation."

The ramped-up kiosks can carve out new revenue streams for retailers. Most providers strike sharing deals with store partners.

Mix & Burn, additionally in four Borders locations and one Meijer mass merchant outlet, charges stores about $20,000 for each machine. Stores then earn a large share of the resulting sales revenue. Alternatively, Mix & Burn can primarily shoulder machine costs, and retailers in turn take smaller revenue amounts.

"There definitely is a lift in overall sales after we move a system into a store," Mix & Burn president Bob French says. "We are encouraged by that."

Others, like Virgin Megastores, are improving the selection at preview kiosks. In 2005, Virgin equipped its New York Times Square and Hollywood locations with all-in-one preview kiosks that increased the inventory customers can sample to 250,000 CDs, 11,000 DVDs and 7,000 games.

"Before, there were about 30% of kiosks being used [at Times Square] at any given time, but we're now seeing peaks as high as 70% with the new machines," says Robert Fort, director of information technology at Virgin. --S.A.

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INVESTOR'S BUSINESS DAILY
Investor's Business Daily

May 31, 2007 Thursday
NATIONAL EDITION

Self-Serve Movie Rental Kiosks A Surprise Hit With Consumers; DVD vending machines find national audience, put pinch on retailers

BYLINE: PATRICK SEITZ

SECTION: FRONT PAGE NEWS; Pg. A01

LENGTH: 736 words

Automated kiosks for renting DVD movies are popping up in grocery stores, drug stores and fast-food restaurants nationwide.

The growth of these self-service machines has taken industry analysts by surprise. And their popularity could further weaken traditional video rental chains like Blockbuster.

Companies such as Redbox Automated Retail, TNR Entertainment and **DVDPlay** are racing to sign deals with supermarkets and other retailers with lots of foot traffic.

The number of DVD rental kiosks in the U.S. at the end of 2006 more than tripled from a year earlier to 3,700, said Adams Media Research. The number could reach 9,000 by the end of this year.

"They're really taking off," said Tom Adams, president of Adams Media Research. "The real question is: How far do they get?"

With 9,000 kiosks, Adams estimates the segment would generate annual sales of about $270 million, which is about 3% of the video rental market. Unknown is how many kiosks the market can support.

TNR said a survey it conducted points to potential annual sales of nearly $1 billion for self-service DVD rental kiosks in five years. It forecasts 25,000 or more retail kiosks over the next three years.

In the meantime, kiosk companies are battling for retail space. Redbox, owned by a joint venture between McDonald's and Coinstar, has placed machines in McDonald's eateries as well as in Albertsons and other grocery stores owned by SuperValu. TNR, backed by a group of institutional investors, operates The New Release kiosks in Kroger and other grocery chains.

Oakbrook Terrace, Ill.-based Redbox is the leading operator of movie rental kiosks, with machines in about 3,200 locations. It expects to have 4,000 kiosks in place by the end of June. Coinstar, known for its coin-counting machines, has set a goal of installing 10,000 Redbox machines in three to five years.

"We want to get as many locations as close to you as possible in places where you normally go," said Redbox CEO Gregg Kaplan.

The company ideally wants people to pass four or five Redbox machines between home and work, he said. Redbox lets customers return DVDs to any of its machines.

Houston-based TNR is the No. 2 player. It operates DVD rental kiosks in more than 1,600 locations.

DVDPlay of Campbell, Calif., has 1,200 kiosks in place nationwide.

All three firms use credit-card-enabled kiosks. Redbox and TNR charge $1 a day, while **DVDPlay** charges $1.49 for the first night and 99 cents for each extra night.

While industry bigwigs were focused on digital delivery of movies over the Internet as the next big thing, they missed the growth of DVD rentals by vending machine.

"Practically no one saw this coming," said Brad Hackley, vice president of business development for the home video group at industry tracker Rentrak. "The kiosks came out of nowhere."

Movie Gallery, the nation's No. 2 traditional video rental store chain, has taken notice. It has been testing 74 Hollywood Video-branded kiosks and plans to add 200 more this year.

Meanwhile, No. 1 movie rental company Blockbuster is focused on building a subscription-based rental business. Its Total Access plan allows for online DVD rentals through the mail and the ability to exchange discs at its stores.

Blockbuster and Movie Gallery have been hit hard by rival entertainment options, including cable video on demand, digital video recorders and online DVD rental leader Netflix. Blockbuster has closed 600 U.S. stores, or 13% of its outlets, in just 2 years. Movie Gallery has closed 184 stores, or 4% of its total, in the last year.

The growth of DVD kiosks could force more closings, analysts said.

Convenience and lower prices are the strengths of the DVD kiosk business. Its biggest weakness is limited copies of hit movies.

Redbox is trying to lessen that problem with machines that hold more DVDs, Kaplan said. Current Redbox machines hold 500 DVDs. For hit titles, it has 10 to 30 copies each.

"Like everybody else in the DVD rental business, we can't necessarily get everybody's demands met for the top title after it just comes out on a Friday or Saturday night at 8 o'clock," he said.

Redbox also lets users go online and see the inventory of nearby machines and even reserve a movie. TNR plans to offer online DVD reservations soon as well.

Adams Media Research predicts that online DVD services will double to $3.4 billion in 2011. The total rental industry will rise only 1% to $8.5 billion in 2011, Adams said.

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EXHIBIT B

TO THE
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True Click and Mortar: Freeflyr Automation to Unveil DVDPlay at VSDA Convention in Las Vegas, July 8-10.

From: Business Wire Date: June 27, 2000

BusinessWire Business Editors

NEWBURY PARK, Calif.--(BUSINESS WIRE)--June 27, 2000

Freeflyr Automation today announced that it will unveil the DVDPlay, fully automated, Web-connected video stores, at the VSDA convention in Las Vegas, July 8-10.

The DVDPlay consists of a central network hub that interacts with the www.dvdplay.net Web site in the virtual world, and with well- positioned automated interactive kiosks in the physical world. The incredible efficiency of the system means that it can operate at greater than 15 times the profit margins of traditional video stores with a minimal investment.

"We are taking advantage of the best features of e-commerce and brick-and-mortar retailing," said Bill Barber, president of Freeflyr Automation. "Most e-commerce companies need to physically interact with their customers, and most physical retailers beg for the efficiency that the Web should offer. We have married the concepts together in the most efficient, synergistic manner possible -- fully automated at the Web and fully automated at the low-cost physical stores.

"The DVDPlay system was designed to bring the term `profit margin' back into the video rental and sales market by providing an efficient alternative for expanding distribution within geographic territories. Minimal floor space and labor requirements allow for business expansion without the excessive capital investment," explained Barber.

"Systems can be placed in high-traffic locations to capture new business opportunities as stand-alones or as satellites to existing business. An optional integrated plasma display screen also provides a means to attract attention to new movies and additional revenue opportunities through advertising sales," said Barber.

"The low cost and small footprint of our interactive kiosks make it possible to profitably enter new markets in locations that are more convenient to consumers than traditional retail locations. Reductions in labor and real estate costs -- typically associated with traditional video-rental outlets -- result in tremendous margins. Internet connectivity makes it possible for customers to have the choice of shopping online or on-site, and for management to access a variety of real-time usage, stocking and security data," said Barber.

Customers also have access to real-time inventory and promotions via the www.dvdplay.net Web site.

The interactive kiosks' models have capacities ranging from 100 to 500 disks, are operated by simple graphical touch-screen commands, and take credit and select debit cards. The total time for a complete transaction can be as fast as 20 seconds. Returns are even faster and are done back at the kiosks.

Philip Tomasi, vice president and design chief, explained the management tools in the DVDPlay system: "Data from our university locations (USC and UCLA) allowed us to design an Internet-based interface that provides a great deal of transaction and system information in a scalable, efficient format. By strengthening the network hub, we were able to design and construct truly cost-effective hardware that can be placed absolutely anywhere. The reactions to the system have been overwhelmingly positive."

The company is currently addressing partnerships to facilitate a global presence. The company's facilities are located in Newbury Park. For additional information, contact Bill Barber at 888/933-4DVD, via the company's Web site at www.dvdplay.net, or visit the VSDA booth (No. 1362) in the DVD Festival area.

DVDINSIDER: DVDPlay Debuts First U.S. Automated Entertainment Machine --AEM-

From: DVD News Date: April 10, 2003

DVD News

04-10-2003

DVD NEWS-10 April 2003-DVDINSIDER: DVDPlay Debuts First U.S. Automated Entertainment Machine --AEM-

Turning the boom in DVD player sales into a new income opportunity for franchisers, a Silicon Valley company called DVDPlay launched the nation's first equivalent of an ATM for the entertainment industry. Automated Entertainment Machines, or AEMs, enable franchisers to rent or sell DVDs and run TV spot advertising and movie trailers through strategically positioned stand-alone machines in high-traffic locations such as fast food restaurants, drug stores, convenient stores and universities. The AEM's debut comes as DVD players are outselling all other home electronic devices. Industry observers estimate the number of DVD-ready households in the United States, already at 50 percent today, will reach 80 percent within three years.

Described as "the big red machine with the small footprint," an AEM looks and functions like a bank's ATM, while offering the instant gratification of on-the-spot DVD access at a favorite coffee house or without an extra stop on a shopping trip. Unlike standard movie rental stores, AEMs are open 24/7. Unlike online movie rental services, there's no wait. Additionally, users will be able to access any machine from their home or office PC to check availability and reserve the movie to be picked up later.

"We expect the adoption of AEMs to accelerate quickly and one day be on a par with now ubiquitous ATMs," said Dee Cravens, executive vice-president and chief marketing officer of DVDPlay. "Industry analysts estimate that DVD worldwide sales and rental revenues will continue to grow exponentially, doubling to $40 billion by 2007. These numbers may surprise potential franchisees and other entrepreneurs looking for safe, new investment opportunities in an unsettled economy."

In contrast to other tech sectors, DVD rentals offer a sweet spot:

-- DVD rentals will grow at a rate of 115% annually.

-- In 2001 and 2002, DVD players outsold all other home electronic devices.

-- 50% of households own a DVD player today, estimated 80% in three years.

-- 80% of PCs will be DVD enabled by 2005.

DVDPlay generates revenue for franchises in three important ways: rental fees, late fees and DVD sales revenue. Rental fees are created every time a customer uses an AEM to rent a DVD. Late fees are based on the terms set for the rental agreement. Typically, late

fees accrue on an estimated 15% of all rentals, providing a significant source of additional revenue every month. Some consumers prefer to purchase the DVD outright which gives the franchisee another easy way to bring in extra revenue. Finally, franchisees can add advertising on the machine's large flat panel screen, email promotions and membership loyalty programs as additional revenue streams.

Each U.S. Area of Dominant Influence (ADI) will have one or more designated franchiser depending on the number of households and the territory desired; Franchisees will be able to place numerous machines within a given city or territory. Unlike other franchise opportunities, this means that there will be no local competition to compete for customers. Franchisees who sign up early will have the advantage of the most desirable U.S. markets.

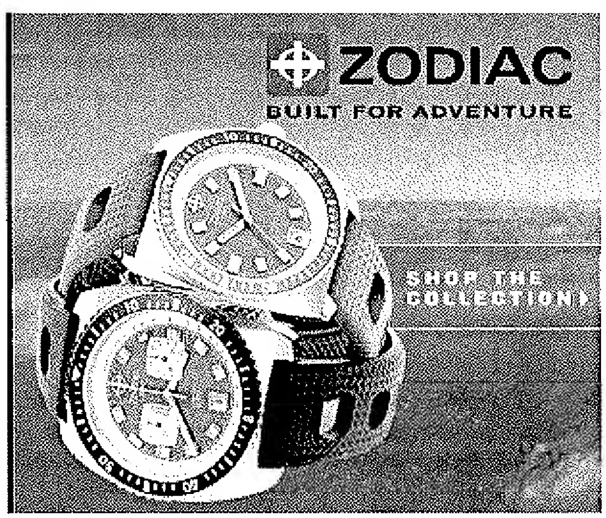
DVDPlay offers customer support, designed to help new franchisees get started with every aspect of the business. This includes things such as onsite training, in field sales assistance, installation, maintenance and operating manuals. Furthermore, all franchisees are supported 24/7 via a personal, secure and safe administrative site.

DVDPlay AEMs are complete, stand-alone intelligent machines, compact in size and connected via the Internet. They are capable of dispensing, receiving, renting and selling DVDs, CDs and DVD games. The machines are easy to use and require point of purchase payment in the form of a credit.

The first step is to select a DVD by following a friendly touch-screen menu, swipe a credit card for payment and leave an email address to receive special discounts and promotions in the future. Returns are simple; customers press one button on the touch screen and slip their DVD into the designated slot. DVDPlay automatically restocks the DVD so it's ready for the next customer. If customers forget to return DVDs on time, the machine automatically adds late charges to their transactions and notifies the customer via email. All receipts are instantly sent by email.

DVDPlay's AEMS are being tested in four states --New York, North Carolina, Texas and California. For example, Duane Reed drug stores in Manhattan and The Pantry in North Carolina are currently testing AEMs under development agreements with Video Vending New York, Inc. with promising results. Additional AEMs will be rolled out nationwide when DVDPlay finalizes its franchising agreements.

New DVD Investment Opportunity Opens for Franchisees and Entrepreneurs; DVDPlay Debuts First U.S. Automated Entertainment Machine --AEM--.



From: Business Wire Date: April 11, 2003
More results for: DVDPlay inc.

BusinessWire Entertainment Editors/Business Editors/High-Tech Writers

International Franchise Expo

WASHINGTON--(BUSINESS WIRE)--April 11, 2003

Turning the boom in DVD player sales into a new income opportunity for franchisers, a Silicon Valley company called **DVDPlay** today launched the nation's first equivalent of an ATM for

the entertainment industry. Automated Entertainment Machines, or AEMs, enable franchisers to rent or sell DVDs and run TV spot advertising and movie trailers through strategically positioned stand-alone machines in high-traffic locations such as fast food restaurants, drug stores, convenient stores and universities. The AEM's debut comes as DVD players are outselling all other home electronic devices. Industry observers estimate the number of DVD-ready households in the United States, already at 50 percent today, will reach 80 percent within three years.

Described as "the big red machine with the small footprint," an AEM looks and functions like a bank's ATM, while offering the instant gratification of on-the-spot DVD access at a favorite coffee house or without an extra stop on a shopping trip. Unlike standard movie rental stores, AEMs are open 24/7. Unlike online movie rental services, there's no wait. Additionally, users will be able to access any machine from their home or office PC to check availability and reserve the movie to be picked up later.

"We expect the adoption of AEMs to accelerate quickly and one day be on a par with now ubiquitous ATMs," said Dee Cravens, executive vice-president and chief marketing officer of **DVDPlay**. "Industry analysts estimate that DVD worldwide sales and rental revenues will continue to grow exponentially, doubling to $40 billion by 2007. These numbers may surprise potential franchisees and other entrepreneurs looking for safe, new investment opportunities in an unsettled economy."

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How The Franchise Works: Money Matters

DVDPlay generates revenue for franchises in three important ways: rental fees, late fees and DVD sales revenue. Rental fees are created every time a customer uses an AEM to rent a DVD. Late fees are based on the terms set for the rental agreement. Typically, late fees accrue on an estimated 15 of all rentals, providing a significant source of additional revenue every month. Some consumers prefer to purchase the DVD outright which gives the franchisee another easy way to bring in extra revenue. Finally, franchisees can add advertising on the machine's large flat panel screen, email promotions and membership loyalty programs as additional revenue streams.

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Customer Support

DVDPlay offers customer support, designed to help new franchisees get started with every aspect of the business. This includes things such as onsite training, in field sales assistance, installation, maintenance and operating manuals. Furthermore, all franchisees are supported 24/7 via a personal, secure and safe administrative site.

How It Works: The AEM

DVDPlay AEMs are complete, stand-alone intelligent machines, compact in size and connected via the Internet. They are capable of dispensing, receiving, renting and selling DVDs, CDs and DVD games. The machines are easy to use and require point of purchase payment in the form of a credit.

The first step is to select a DVD by following a friendly touch-screen menu, swipe a credit card for payment and leave an email address to receive special discounts and promotions in the future. Returns are simple; customers press one button on the touch screen and slip their DVD into the designated slot. **DVDPlay** automatically restocks the DVD so it's ready for the next customer. If customers forget to return DVDs on time, the machine automatically adds late charges to their transactions and notifies the customer via email. All receipts are instantly sent by email.

Pilot Programs

DVDPlay's AEMS are being tested in four states --New York, North Carolina, Texas and California. For example, Duane Reed drug stores in Manhattan and The Pantry in North Carolina are currently testing AEMs under development agreements with Video Vending New York, **Inc.** with promising results. Additional AEMs will be rolled out nationwide when **DVDPlay** finalizes its franchising agreements.

Franchisees Contact Info

Interested entrepreneurs and franchisees should contact **DVDPlay**'s sales department to discuss financing options. Contact: Don Webb, vice-president of franchise sales, 408.395.1727 Ext. 106, email: dwebb@**dvdplay**.net or to learn more about **DVDPlay** (www.**dvdplay**.com).

About **DVDPlay**

DVDPlay is the manufacturer and franchiser of Automated Entertainment Machines (AEMs) that enable consumers to conveniently rent or purchase DVD movies wherever they shop, work or play and franchise owners to manage their AEMs remotely 24/7. AEMs are Internet connected, small footprint, touch screen and credit card enabled.

More articles like this:

1. **DVDINSIDER: DVDPlay Debuts First U.S. Automated Entertainment Machine -- AEM-**
DVD News; April 10, 2003; 761 words

2. **DVDPlay to Make DVD Hit Movies Available Everywhere Consumers Shop, Eat, Live & Work.**
Business Wire; May 20, 2004; 910 words

3. **DVDPlay Introduces World's Fastest, Smallest and Highest Capacity Automated DVD Movie Rental Kiosk; Tejas Video Selects New A55 Kiosk as Movie Rental Solution for U.S. Military.**
Business Wire; July 11, 2005; 841 words

4. **Newstream Digest: Making an Unforgettable Picnic, Dido Begins U.S. Tour, Automated Entertainment Machines Rent or Sell DVDs 24/7 & Other Free Multimedia Content for Journalists.**
Business Wire; May 20, 2004; 1,540 words

5. **DVDPlay(R) Announces 200% Growth in DVD Movie**

DVDPlay to Make DVD Hit Movies Available Everywhere Consumers Shop, Eat, Live & Work.

From: Business Wire Date: May 20, 2004

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LOS GATOS, Calif.--(BUSINESS WIRE)--May 20, 2004

Automated Entertainment Machines (AEMs(TM)) Rent or Sell DVDs 24/7;

Instant Access Technology Eliminates Wait Times at Stores and by Mail

DVDPlay(TM), Inc. the innovator of the first remotely managed, fully automated retail machines, today introduced two new second-generation Automated Entertainment Machines -- AEMs. The AEM100i and AEM350i are suitable for installation in restaurants, grocery stores, universities, large apartment and business complexes, and virtually any location movie watchers frequent. These two Internet connected machines will provide a new revenue source for retail chains, businesses and campuses while providing the newest and most convenient way for people to rent or buy the latest hit movies.

Rentals and sales of DVD movies topped $25 billion in 2003, and are expected to continue growing rapidly along with the availability of low-cost players. At the same time, consumers are looking for inexpensive and easier ways to rent or buy latest release movies. The ongoing shift from large video store chains to Internet mail order is the latest in a series of business model changes that attempt to address this need. DVDPlay AEMs will give consumers the convenience and selection of hit movies offered by mail order without the several days wait. These AEMs provide the convenience of immediate access in locations where consumers normally shop, eat, work and live.

"The age of super-convenient consumer access to entertainment is here," said DVDPlay CEO Jens Horstmann. "Our second-generation AEMs are designed for high-volume

areas as well as smaller traffic locations. We expect to see these systems available in large national retail stores including fast food and grocery stores. Using these systems, customers will now be able to rent or buy the latest DVDs in less than a minute and return them in less than 20 seconds. This will help draw foot traffic to businesses, increase business appeal, and offer the business new ways to make money."

For years, grocery stores, restaurants and other retail outlets have recognized the potential for renting movies in their stores, but weren't willing to take on the burdens of managing extra inventory and personnel. Now, Internet connectivity enables remote administration -- making it easy to gauge customer preferences, deliver reports, restock products and keep track of financial data -- and new ways to serve customers who can personalize requests for instant electronic receipts, special promotions and discounts. Because these AEMs are Internet-connected, screen-navigable, cashless and remotely managed, labor, administrative costs and responsibilities are kept to a minimum.

DVDPlay AEMs are advertising-enabled through DVDPlay's ADPlay(TM) Network, which offers businesses an entirely new way to increase revenue through televised, in-store ads or static ad displays that reach the customer at the moment when they can immediately buy products.

The DVDPlay machines operate exclusively by credit or debit card so there are no application forms to fill out, no video store clerks to pay, and no cash to collect daily. The machines accept all major credit cards and allow purchase or rental transactions to be completed in less than a minute. The entire system is simple, secure and friendly. The AEM's small footprint (5 square feet) is ideal for placing AEMs inside or outside of locations where consumers come and go every day.

The new AEM100i and AEM350i hold 102 and 350 DVDs, respectively. The systems feature an intuitive, fully automated touch-screen interface and provide complete movie descriptions including details on the actors, director and producers. The built-in video screen can run movie trailers or advertisements customized for a particular retailer or location. Machines are shipping now to major retail outlets. Prices start at under $10,000. The company expects to announce several major customers and installations over the next few weeks.

About DVDPlay

Founded in 1999, DVDPlay is the creator and manufacturer of the world's first fully automated and remotely managed retail machine. The Automated Entertainment Machine -- AEM -- represents the new generation in a line of Web-based enhanced retail transaction technologies and machines to be developed by DVDPlay. DVDPlay's patent-pending AEMs are an effortless new way to rent and sell the latest hit DVD movies and games. DVDPlay offers the only scalable platform in the world that facilitates a "Rental and/or Sales" mode via an intelligent backend that communicates with an individual or an entire network of retail machines dynamically. Virtually any retail business function can be managed including, pricing, promotions, inventory management, advertising and movie trailer insertions, email, alerts, credit card transactions, business reports and many others in real-time.

DVDPlay's AEMs are Internet-connected, screen-navigable, cashless and require minimum personnel to administer. Owner/operators can remotely manage all of their machines from a central location. On-line administrative reports keep owner/operators informed 24/7 on all rentals, sales and other revenue streams, and allow advertising and email promotions.

MULTIMEDIA AVAILABLE: http://www.businesswire.com/cgi-bin/mmg.cgi?eid=4645249

WOULD YOU LIKE A MOVIE WITH THAT? MCDONALD'S TESTING $1-A-DAY DVD RENTALS AT STORES IN DENVER

From: **Denver Rocky Mountain News** Date: **May 25, 2004** Author: **Rachel Brand, Rocky Mountain News**

Rocky Mountain News

Denver Rocky Mountain News

05-25-2004

WOULD YOU LIKE A MOVIE WITH THAT? MCDONALD'S TESTING $1-A-DAY DVD RENTALS AT STORES IN DENVER

McDonald's Corp. will test-market DVD rentals in its 104 Denver stores starting in June. If the six-month experiment goes well, McDonald's will roll out the program nationally, becoming the first fast-food franchise to offer DVDs.

The company is in the process of setting up kiosks where customers can rent DVDs with the swipe of a credit card. A transaction will take less than a minute, and a fee of $1 a day plus tax compares favorably with Blockbuster's $3.99 for three days. Customers can return the movies to any McDonald's store.

The kiosks, made by Los Gatos, Calif.-based DVDPlay Inc., hold as many as 350 copies of the top 25 or 30 titles.

McDonald's says it will stock the same top new releases that video stores stock. And it will restock with new movies every Tuesday.

It's unlikely it would carry independent movies such as the recently released Supersize Me, a documentary that charts a man's physical decay after eating three McDonald's meals a day for a month.

Oak Brook, Ill.-based McDonald's has called the movie "shocking" and "irresponsible."

The company did not return a call asking if it would prohibit selling movies with strong violent or sexual content.

Industry consultants hail the concept of renting mainstream movies as a creative way to bring customers into the store.

"It's certainly an attractive price point. It also requires a return trip, doesn't it?" said Dennis Lombardi of Chicago-based Technomic Inc.

"I think it's an adventurous step on their part," said Jerry Collins, principal of Dallas-based Food For Thought Inc., a food marketing company. "I'd be very interested in seeing at the end of the test, how much lift or increased traffic they get out of it."

McDonald's declined to discuss financial projections.

The fast-food behemoth, with 13,000 U.S. stores, maintains that it wants to provide added convenience for customers who lead busy lives, not compete with the likes of rental giant Blockbuster.

The feeling is mutual. Dallas-based Blockbuster, with 8,600 stores across the globe and 100 in metro Denver, has long said new releases make up the lion's share of its rental income.

Last year, the company logged $4.5 billion in rental income and $1.28 billion in merchandise sales.

"Are we concerned? We're about as concerned as they would be if we suddenly announced we're selling hamburgers," Blockbuster spokesman Randy Hargrove said.
The same goes for Video One, one of the largest independent video stores in Denver.
"We have one McDonald's where we are (on Colfax Avenue), and I'm afraid to take my family there," Video One manager James Bond said. "I don't think it would affect us at all, to be honest with you."
Carolyn Gust, a McDonald's spokeswoman, said that concepts that fly in Denver often are rolled out nationwide. The company tested double-lane drive-throughs and self-serve ordering kiosks here, she said.

INFOBOX
DVD rental comparison
Blockbuster * $3.99 (plus tax) for a three-day rental. Return DVD to its rental location.
McDonald's * $1 (plus tax) for each day's rental. Return DVD to any McDonald's store.

Will McDonald's super-size its rental program? Test expands after 'incredibly positive' response.(Retail)

From: Video Business Date: May 31, 2004 Author: Kaplan, Simone

If McDonald's Corp. has its way, hungry customers around the nation will be able to take home a DVD with their burger and fries.

Building on initial rollouts of DVD rental stands in three markets, McDonald's will put kiosks at 100 sites in Denver during the next month as part of a pilot program to gauge customer interest in on-location DVD rentals. The expansion follows previous tests of the concept in two dozen Denver sites and a handful of locations in Washington, D.C., and Las Vegas.

"The DVD rental initiative is part of McDonald's desire to make our business more relevant and convenient to our customers," said Kelly Hoyman, marketing manager for McDonald's Rocky Mountain region. "We want to make our restaurants a destination for customers who would already be renting movies in addition to picking up dinner."

Under the program, McDonald's customers can rent DVDs from the automated kiosks for $1 per night plus tax. Renters can keep the DVDs for as long as they like for $1 per additional night. If the DVD is kept for more than 21 nights, McDonald's charges $25 and the customer effectively buys the DVD.

There's no membership or late fees, and the DVDs can be returned at any McDonald's location with a kiosk, which are installed either inside or outside the restaurant, depending on the location.

The automated rental machines, which hold between 100 and 350 DVDs, are manufactured by Los Gatos, Calif.-based DVDPlay and are operated and maintained by Redbox, a division of McDonald's.

The machines take credit and debit cards and are stocked with new movies every Tuesday.

If the Denver test goes well, the company could take the program nationwide, but no timeline has been set and info on additional possible markets wasn't immediately available.

With more than 30,000 locations around the country, McDonald's could increase competition for established video retailers such as Blockbuster, which runs 8,500 retail outlets. But Big Blue appears largely unconcerned.

"We're about as concerned with McDonald's renting DVDs as they would be if we started frying up burgers," a Blockbuster spokeswoman quipped.

During the past few years, McDonald's has embarked on a brand strategy intended to broaden its customer base and increase the chain's appeal for adults as well as children.

In addition to launching more healthful menu items and happy meals for adults that

include "stepometers" to promote exercise, the Oak Brook, Ill.-based burger giant has struck a cost-sharing deal with Wayport Inc. to install high-speed wireless Internet service in 8,000 McDonald's locations by 2005 and is about to announce a music-downloading agreement with Sony Corp. McDonald's also has said that it plans to stop doing stand-alone entertainment promotions in favor of a broader entertainment marketing campaign that includes the recent "I'm Lovin' It" music campaign.

The DVD rental initiative is part and parcel of the chain's larger entertainment promotion strategy because it helps create a long-term relationship with customers who can appreciate the convenience of one-stop shopping, said Susan Nunziata, executive editor of the Entertainment Marketing Letter, a newsletter covering entertainment promotions.

"DVD rentals help foster a stronger customer relationship, because it's a renewable resource," Nunziata said. "There's always something new they can keep coining back to."

McDonald's ran two test programs prior to the Denver pilot, in Washington, D.C., and Las Vegas, with fewer than 20 kiosks placed in each market. Customer response to the earlier test was "incredibly positive" in terms of DVD sales and increased levels of customer convenience, Hoyman said, though she couldn't confirm that McDonald's had run any customer satisfaction surveys in the two beta markets.

Meanwhile, DVDPlay also has client companies testing the machines in other markets around the country. VideoII is testing the automated rental machines in several Albertson's supermarkets in Salt Lake City, and SpeedyDVD is conducting a pilot at retail locations in Hershey, Pa.

WoodLand AEM Enters Agreement With Limelight Media Group for Digital Content Management.

From: PR Newswire Date: August 2, 2004

PR Newswire

Limelight Media Group, Inc. (BULLETIN BOARD: LMMG) of Memphis, TN has executed an Agreement with WoodLand AEM of St. Louis, MO to provide content management, content development and advertising sales for LCD screens prominently displayed on the DVD rental machines deployed by Woodland AEM. The Agreement allows WoodLand AEM to provide a Point of Sale advertising opportunity on its DVD rental machines, manufactured by DVD Play, Inc. (http://www.dvdplay.net/), that are being deployed in convenience stores, grocery stores, military bases, universities and other establishments with high traffic count. Limelight Media will provide the network platform for the delivery and management of content to be seen on the LCD screens at the customers of WoodLand AEM.

Larry DeVuono, President of WoodLand AEM, states, "We are excited about the opportunity to bring this new technology to our clients, and coupled with our DVD Play distribution program, we anticipate a continued rapid growth in our deployment of DVD rental kiosks."

Limelight Media Group, Inc. headquartered in Memphis, TN was founded in February 2000 to create, manage, and support out-of-home digital advertising and promotional networks. Limelight today provides "in-theater," "in-lobby," and interactive promotional advertising mediums for the cinema advertising industry. The Company's digital media management system enables simultaneous delivery of video content to a variety of remote audiences in real time, allowing for immediate customization of messages through a centralized network operations center. The company recently began expanding its efforts to include grocery, retail, restaurant, and the hospitality industry. More information can be found at http://www.limelightmedia.com/ .

This release includes projections of future results and "forward-looking statements" as that term is defined in Section 27A of the Securities Act of 1933 as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934 as amended (the "Exchange Act"). All statements that are included in this release, other than statements of historical fact, are forward-looking statements. Although management believes that the expectations reflected in these forward-looking statements are reasonable; it can give no assurance that such expectations will prove to have been correct. Important factors that could cause actual results to differ materially from the expectations are disclosed in this release, including, without limitation, in conjunction with those forward-looking statements contained in this release.

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CONTACT: David V. Lott, President of Limelight Media Group, Inc., +1-866-887-LIME (5463); or Larry De Vuono, President of WoodLand AEM, +1-636-343-3797

Web site: http://www.limelightmedia.com/ http://www.dvdplay.net/

Keep those customers spending: internet usage, DVDs continue to grow in popularity.(Technology)

From: American Coin-Op Date: February 1, 2005 Author: Rupnick, Jan

Magazine

If you're thinking about ancillary revenues as you settle into the new year, you're not alone. Since the first coin laundry opened in 1934, laundry owners have made ancillary revenues such as vending machines a staple in their coin laundries.

With the demands of the public constantly changing, laundry owners are faced with the challenge of adding new services to help entertain and entice customers as well as generate additional revenue. Some of the new ancillary revenue sources to hit laundries include DVD vending machines and Internet cafes.

MAKING THE TIME FLY

Today's consumer is different. Unlike in the past, they look for entertainment value in everything they do, and the laundry is no exception. While customers realize the importance of doing the laundry, some will see it as time that they could be doing something else. Whenever a storeowner can add something of interest for customers, it gives them just one more thing to occupy their time while doing their laundry and it gives the storeowner additional revenue.

"Anything you can do that makes the customers feel like it takes less time enhances the feeling that you're in a faster location," says Jeff DeGroot, Fuel Supply Inc. president. Fuel Supply Inc., headquartered in Dallas, is an operator of restaurants, convenience stores, gas stations and now coin laundries.

"It may not be a faster wash, but if customers are surfing the Internet, playing a video game or watching a movie that is going to make the time feel faster," DeGroot adds.

STAYING CONNECTED

From cell phones to hand-held text messaging, today's generation is constantly connected. With the dawn of the Internet, a whole new world of communication opened up. To capitalize on this growing trend, Nick Tesseris, owner of Point Laundry in Grand Rapids, Mich., added Internet access to his laundry.

Located near a college campus, Tesseris saw this as an opportunity to attract students. "When you give customers the option of using their laptops to respond to e-mail or to study, it just gives them something productive they can do," says Tesseris.

One concern about offering an Internet cafe is how the customers use the Internet. "There is some fear that customers will abuse the sites they visit," explains Craig Dakauskas, Speed Queen national sales manager. "But if you are providing the computers, you can install blocks prohibiting certain sites."

Asked if his customers were misusing the Internet, Tesseris stated that he has not had any problems. "The students are respectful," he says. "They use headphones if they are

listening to music and respect the fact that they are in a public place."

Word of mouth about Internet access at the laundry has helped Tesseris build a following. "We've had a lot of success with the Internet cafe. The response has been positive," Tesseris says.

Internet cafes are not just for laundries near colleges. Recently, a laundry owner in California was looking for ways to keep customers in the laundry longer while they were washing clothes. Located in an area where in-home computers were a luxury rather than a staple, they added a computer room with limited Internet access. The most common usage was for school-age children to do homework assignments and for others to play online games.

CLOTHES AND A MOVIE

Do your laundry and rent a movie? Automated DVD kiosks are a great way to build additional revenue, according to ELO Media LLC.

Traditionally found on college campuses, at airports, in grocery stores and in some restaurants, DVD kiosks provide customers with the convenience of renting a movie while grabbing dinner, grocery shopping or doing their laundry.

Similar in size to an ATM, DVD kiosks can hold anywhere from 100 to 350 titles. Operated as a franchise, most companies offer hosting opportunities to business locations, limiting the amount of cash vested in the operations.

"This could be a great way to get involved with a lower risk," says Kevin Hietpas, Huebsch national sales manager. "Laundromat owners provide floor space without the financial investments."

Will customers rent movies from a machine? McDonald's has partnered with DVDPlay to run a group of 157 pilot locations. The results have prompted McDonald's to announce that they will be installing DVD kiosks from DVDPlay into restaurant locations nationwide during the next several years.

"Most people go to Blockbuster or another video store to rent their movies," says Dakauskas. "But with time constraints, picking up a video while you are doing the laundry or buying dinner could save families from additional running around."

Maintained by the owner/operator, there is little that the coin laundry owner will have to do. Inventory is self-managed, and the DVD kiosks operate with a credit card so there is no cash in the machine.

Safety is a concern. "This might be a great amenity depending on your location," says Keith Walker, owner of Barcade Amusements in Tulsa, Okla. "Because of where my store is, I would be more hesitant with the possibility of people breaking in to steal the DVDs and damaging the store."

According to DVDPlay, it's virtually impossible to break into the kiosks.

"The screen is made with a high-impact, one-half-inch tempered glass. The machine is metal and how the movies are loaded and unloaded makes it very difficult to get the DVD videos," says Julia Mitchell, DVDPlay marketing communications manager.

To change out movies, owners/operators use the same slot as customers instead of opening up the machine.

Whether it's Internet cafes. DVD vending machines or other ancillary revenues, the laundry of the future will definitely look different from past laundries and even today's laundry.

Jan Rupnick is public relations specialist for Alliance Laundry Systems.

McDonald's adding DVD rentals to second market: Salt Lake City move follows Denver success.(digital video discs)

From: Video Business Date: April 4, 2005 Author: Ault, Susanne

After nearly a yearlong experiment, McDonald's is heading toward making DVDs as permanent as hamburgers and fries.

Within its initial Denver test market, the fast-food giant's DVD rental kiosks are here to stay, officials said last week. Starting in May of last year, McDonald's rolled out one vending machine in 104 of its locations in the city and the surrounding metro area.

Strong appetites for rental soon led McDonald's to order a second machine for 60 of the locations, officials noted. And now, the fast food chain is set to roll out 100 DVDPlay machines in a second market--Salt Lake City--in July. McDonald's execs also are analyzing several other cities for possible addition to the DVD rental program.

By end of 2005, McDonald's aims to have at least 264 machines total.

"We are expanding because of the results that we've had," McDonald's marketing manager Kelly Hoyman said.

Generally, DVDPlay manages kiosks and shares rental revenue with the machines' retail locations. In McDonald's case, however, DVDPlay is contracted to sell and deploy machines at the chain's request for a fee.

McDonald's pays $10,000 to $12,000 for each machine. Revenue figures were unavailable. A growing source of DVD rental kiosks, DVDPlay hopes to have more than 1,600 of its machines in various retail locations across the U.S. and Canada by the end of the year.

McDonald's machines offer 25 to 70 new release titles at each location, with consumers paying $1 a day per DVD. The most renters can be charged is the value of the film, which they keep at that point.

The title selection is a fraction of the tens of thousands offered at a major rentailer outlet, but it appears the fast food chain is making some impact on consumer rental patterns in its test market.

Since McDonald's launched its DVD rentals, Denver-area indie Video King started offering one-day 99 cents rentals for about 10 of its new release titles. Most of its fresh stock continues to be tagged at $3.39 for a one-day rental, and in some cases three-day rental.

"There's a few people that will come in and say if we don't have [a particular] title in stock, they will try [McDonald's]," said Eric Mawhir, a Video King manager.

A handful of Denver-area Blockbuster stores briefly tested 99 cents rentals last year, but

a spokesman denied there was any connection to the McDonald's rentals.

"I don't think we're doing irreparable damage to Blockbuster," said Dee Cravens, DVDPlay executive VP and chief marketing officer. "We're just growing a new class of [rental] consumer at McDonald's. They are cementing a strong relationship with their consumer base by offering an added service."

Overall, DVD rental kiosks don't seem to be causing a stir yet among traditional rentailers. And Adams Media Research head Tom Adams said McDonald's current DVD activities likely represent just 1% of the Denver rental market.

After researching kiosks' ins and outs, Blockbuster has determined it won't launch its own rental machines en masse to compete with grocer and McDonald's rivals.

"We've had limited success overseas in highly trafficked areas," said a Blockbuster spokesman regarding various trials. "But if you look at the cost of the machines, the cost of production and when you add all of that up, you don't have a lot left over to support the investment."

DVDPlay Introduces World's Fastest, Smallest and Highest Capacity Automated DVD Movie Rental Kiosk; Tejas Video Selects New A55 Kiosk as Movie Rental Solution for U.S. Military.

From: Business Wire Date: July 11, 2005

BusinessWire LOS GATOS, Calif. -- DVDPlay, Inc., North America's market share leader and innovator of fully automated, Internet connected and remotely managed movie rental kiosks today introduced the DVDPlay A55 high capacity super fast DVD rental kiosk. The new kiosk holds 502 movies, five times the titles as DVDPlay's original kiosk, and can deliver movies to customers in half the time, approximately 16 seconds. DVDPlay also announced its first A55 kiosk customer, Tejas Videos (dba Quickflix), the sole provider and operator of automated DVD vending kiosks to the United States Military. Around the world, military families and service personnel will now be able to rent the latest Hollywood hits at their base stores, post exchanges and commissaries using DVDPlay's A55 kiosks at prices much lower than possible with traditional mega video rental stores.

"The A55 joins our existing line of automated kiosks and gives our customers a much bigger choice of DVD capacities," said Jens Horstmann, DVDPlay CEO. "Retailers can now choose a kiosk based on capacity instead of physical size to better match demand, foot traffic, location and limited space requirements with kiosks capable of selling or renting 102, 350 or 502 DVD movies with no change to the physical footprint or the popular look and feel of the DVDPlay design."

Von Shows, CEO of Tejas Videos, Inc. said, "This very fast, high capacity kiosk solves significant logistic problems for us, because unlike standard grocery retailers, military bases are generally located in remote areas and spread out strategically across the globe. Given the distance of our base locations, the A55 promises to streamline the operational efficiencies and increase profitability on a global scale, while delivering more movie selections and better service to our customers, something we could not achieve with any other automated kiosk rental solution. Also, with the transient nature of the military population, traveling between bases around the world, DVDPlay's kiosks will allow customers to rent at any kiosk location and return to any other base. This is a feature that not even the mega video stores can claim or offer."

A55 Kiosk Top Features and Benefits

The A55 is built for low cost, high volume production, allowing DVDPlay to set rental prices as low as $1.00 per day -- substantially lower than traditional video stores, which can cost more than $4.00 -- while offering the same great selection of newly released movies. All DVDPlay kiosks are connected to a centralized platform that permits real-time remote control and administration of all functions and features. The DVDPlay remote management and administration capability is unique in the automated rental industry and brings a whole new level of cost efficiencies to customers that are not possible with other kiosk rental systems. DVDPlay's highly scalable and flexible platform allows connectivity to thousands of kiosks that can be managed in real-time one-to-one or one to many depending on retailers needs and requirements.

Real-time on-line diagnostics allow persistent preventive maintenance, inventory load balancing, system optimization and on-the-fly updates such as price changes, trailer insertions, promotions, software upgrades and advanced new features. The A55s high capacity permits -- along with rental -- the sell-through of new and used movies including the ability to stock popular Games, Independent, Art, Ethnic, Foreign and Documentary films, providing the consumer with a new level of service and choice.

About DVDPlay, Inc.

Founded in 1999, DVDPlay (www.dvdplay.net) is the creator and manufacturer of the world's first intelligent, fully automated, credit card, email, advertising enabled, networked and remotely managed DVD rental kiosk. DVDPlay's patent pending Automated Entertainment Machines -- AEMs -- are an effortless way to rent and sell the latest hit DVD movies. DVDPlay offers the only scalable platform in the world that facilitates a "Rental and/or Sales" model via an Internet connected backend that communicates with a single kiosk or an entire network of kiosks dynamically. Virtually any automated retail business function can be managed and administered in real-time including, but not limited to: dynamic pricing, promotions, inventory, advertising and movie trailer insertions, email alerts, credit card transactions, business reports and capture/measurement of key metrics and various data analysis. Customers include large grocery, fast food, convenience store retailers and universities. DVDPlay currently has over 500 kiosks installed in 33 states and Canada, and plans call for worldwide installations to reach 4,000 units by year-end 2006.

About Tejas, Inc.

Founded in 2004, Tejas Videos, (dba Quickflix), (www.quickflixdvd.com) is the sole provider and operator of automated DVD Vending kiosk to the United States Military which includes the Army and Air force Exchange Service (AAFES) as well as the Navy Exchange Command (NEXCOM). Tejas Videos started off with 3 bases in the San Antonio Texas area in early 2004 and has now expanded across the nation to more than 25 states. Tejas Videos plans are to deploy globally over the next year to sea ports and bases through out the Middle East, Europe, and the orient.

To acquire hi-rez images of the DVDPlay kiosk contact: olevy@dvdplay.net

DVDPlay(R) Announces 200 Growth in DVD Movie Rentals for 2005!

From: **Business Wire** Date: **January 17, 2006**

BusinessWire LOS GATOS, Calif. -- DVDPlay, Inc., one of the leading North American DVD rental kiosk companies, is quickly changing the method, the place, the pace and the price consumers pay for new release DVD movies. DVDPlay has rented in excess of 4 million movies, with 2005 representing an increase of 200 over 2004. DVDPlay's 200 increase in rental growth is "notable" when compared to the overall DVD rental market, which grew a respectable 14 in 2005 according to the Digital Entertainment Group (Reuters Jan 5, 2006). DVDPlay operates automated movie rental kiosks located in major grocery chains, fast food restaurants and U.S. military bases. Generally DVDPlay new release titles rent from $1.00 to $1.49 per day depending on location.

DVDPlay continues to lead the way in the rapidly emerging self service DVD rental market with its innovative and patent pending technology by providing the world's smallest rental kiosk (5.5 square feet) designed specifically to fit into major grocery chains and most other high traffic retail outlets without taking up valuable shelf space. DVDPlay Kiosks consistently maintain 99.999 reliability.

"We are transforming the DVD rental business by offering unprecedented convenience and prices that are less than half that charged by traditional video retailers for the latest DVD titles. Frankly, it is stunning to see how fast consumers are adopting our kiosks for renting movies," said Dee Cravens, Chief Marketing Officer of DVDPlay. "We have eliminated the inconvenient and time consuming visit to a dedicated video store by locating DVDPlay kiosks in places that most households visit two or three times per week. DVDPlay has made renting and returning a DVD incredibly convenient. Remote management, automation and small footprint allow us to offer DVDs at $1.00-$1.49 per night making DVD rentals affordable again. New release DVDs are there when and where you want them at the price you want to pay....no monthly dues, no waiting for DVDs to arrive in the mail."

Customer loyalty and retention is another key benefit enjoyed by retailers. Stores can experience increased store traffic and up-tick in the sale of other store products when consumers come to the store to rent and return DVDs. All returned movies are instantly available for re-rental.

In July 2005, DVDPlay introduced its new A55 kiosk with a capacity of 502 DVDs providing enhanced convenience and increased inventory of new release titles. The A55 is designed to meet even the most demanding customers' desire to rent the movies of their choice.

About DVDPlay, Inc.

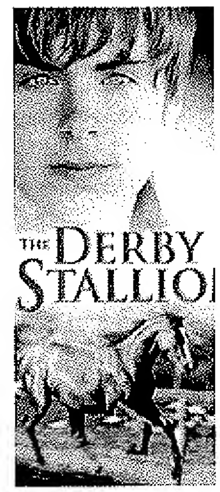
Founded in 1999, DVDPlay is the creator and manufacturer of the world's first Internet connected, fully automated, credit card, email, advertising enabled, and remotely managed DVD rental kiosk. DVDPlay's patent pending Automated Entertainment Machines - AEMs - are an effortless way to rent and sell the latest hit DVD movies.

DVDPlay offers the only scalable platform in the world that facilitates a "Rental and/or Sales" model via an Internet connected backend that communicates with a single kiosk or an entire network of kiosks dynamically. Virtually any automated retail business function can be managed and administered in real-time including, but not limited to: dynamic pricing, promotions, inventory, advertising, movie trailer insertions, email alerts, credit card transactions, business reports and measurement of key metrics and various business data analysis. Customers include large grocery, fast food, convenience store retailers and universities. Currently, DVDPlay operates kiosks located in 33 states in United States and Canada.

DVD PLAY i'm your new video store

DVDPlay Raises $20 Million in New Financing

Chuck Berger named Chairman and CEO of Market Leader in Automated DVD Rental Kiosks



Los Gatos, CA- June 27, 2006 - DVDPlay™, the leading US manufacturer and operator of DVD rental kiosks, announced today that it raised over $20 million in new equity financing. El Dorado Ventures, Emergence Capital Partners, Palo Alto Venture Partners and Vanguard Ventures participated equally in the funding. To date, DVDPlay has raised nearly $40 million in equity financing. The new financing will be used to fund DVDPlay's national roll-out of their DVD rental kiosks. In addition, DVDPlay has secured a similar amount of lease financing commitments to support their installations through 2007.

DVDPlay also announced that Charles (Chuck) Berger has been named chairman, president and CEO. Berger has served as non-executive chairman of DVDPlay since 2001. Mr. Berger brings nearly 30 years of executive experience to DVDPlay. Previously, Berger was CEO of Nuance Communications and has also served as CEO of Vicinity Corporation, AdForce, Inc. and Radius Inc. He has also held executive positions in finance, marketing and sales at Apple Computer and Sun Microsystems.

DVDPlay offers DVD renters unparalleled convenience, low rental prices and current titles with new releases available every Tuesday. DVDPlay kiosks, situated in heavily trafficked locations such as grocery stores, restaurants, convenience stores and apartment complexes, offer consumers a broad selection of new release DVDs in a compact footprint. DVDPlay's patent pending software and products enable dynamic pricing, promotions, inventory management, advertising and movie trailer insertions, as well as the capture and measurement of key business metrics.

"Chuck Berger's appointment is perfectly timed as the Company transitions from startup mode to an established market leader," said Shanda Bahles, a general partner at El Dorado Ventures and DVDPlay board member. "Chuck's reputation and experience are major assets to the company and we are excited that he is on board in a full-time capacity."

"New technologies and leading-edge business practices have begun to transform the

nearly $10 billion North American DVD rental market, and DVDPlay is at the forefront," said Berger. "The company provides consumers with the DVDs they want, when and where they want them. DVDPlay also offers retailers and other commercial property owners the opportunity to capitalize on the DVD revolution. I look forward to being part of the team that will continue DVDPlay's explosive growth," Berger added. About El Dorado Ventures

El Dorado Ventures (EDV) is a leading entrepreneur-focused, early-stage venture capital firm with a 20 year history of success. The firm invests across the information technology spectrum, from semiconductors and systems to communications, software and services, targeting both consumers and the enterprise. www.eldorado.com About Emergence Venture Partners

Emergence Capital Partner's is a leading early-stage venture fund, focused on technology-enabled services ("TES"). The Emergence partners have provided investment capital to TES companies such as Salesforce.com, Ask Jeeves, WebTV, DoubleClick and many others. www.emergencecap.com About Palo Alto Venture Partners

Palo Alto Venture Partners is an early-stage venture capital firm targeting the new and distinctive markets of the Internet. www.pavp.com About Vanguard Ventures

Vanguard is a venture capital firm specializing in seed and early-stage high technology investments. Since 1981, Vanguard has funded 125 startups with more than 30 of these becoming major corporate successes. In aggregate, these companies returned approximately $1 billion to investors. www.vanguardventures.com

About DVDPlay Inc.
DVDPlay offers DVD renters unparalleled convenience, low rental prices and current titles with new releases available every Tuesday. DVDPlay kiosks, situated in heavily trafficked locations such as grocery stores, restaurants, convenience stores and apartment complexes, offer consumers a broad selection of new release DVDs in a compact footprint. DVDPlay's patent pending software and products enable dynamic pricing, promotions, inventory management, advertising and movie trailer insertions, as well as the capture and measurement of key business metrics. www.dvdplay.com

DVD PLAY i'm your new video store

DVDPlay Hits 5 Millionth Movie Rental Mark

Los Gatos, CA - June 28th 2006 - DVDPlay, Inc. the leading U.S. manufacturer and operator of DVD rental kiosks, announced today that it rented its 5 millionth DVD movie. DVDPlay's rental growth rate continues to accelerate - out pacing traditional big box rental store rates by a wide margin. All DVDPlay new release and top hit movies rent from $1.00 to $1.49, depending on kiosk location. First time rental is free.

"We reached the four million rental mark on December 19, 2005, the five million mark on June 15, 2006 and we expect to hit 10 million rentals by year end," said Chuck Berger, Chairman and CEO of DVDPlay. "Our automated kiosks are rapidly gaining traction in retail stores and consumer acceptance has surpassed even our most optimistic plans."

DVDPlay offers movie renters unparalleled convenience, low rental prices and current titles with new releases available every Tuesday. DVDPlay kiosks, situated in heavily trafficked locations such as grocery stores, convenience stores and U.S. military bases, offer consumers a broad selection of new release DVDs in a compact footprint. It can take less than 40 seconds to make a rental transaction.

About DVDPlay

DVDPlay offers DVD movie renters convenience, low prices and new releases every Tuesday. Kiosk are located in high traffic retail locations such as, grocery stores, convenience stores, quick service restaurants, U.S. military bases and large apartment complexes. Kiosks are 5.5 square feet and offer in excess of 500 disc slots per kiosk. DVDPlay's patent pending software and products enable dynamic pricing, promotions, inventory management, automated email receipts, advertising and movie trailer insertions, as well as the capture and measurement of key business metrics. www.dvdplay.com

DVD PLAY i'm your new video store

Genuardi's Markets and DVDPlay Promote New Movie Releases Using In-Store Kiosks

NORRISTOWN, PA - March 14, 2007 - Genuardi's Markets and DVDPlay team-up to offer customers the latest Hollywood DVD rentals inside local stores in the Philadelphia area. The easy-to-use, red, DVDPlay kiosk is located in the front of the participating Genuardi's stores and has up to 100 movie titles to choose from.

"The hottest hits of the season are in our stores," said Maryanne Crager, public affairs manager for Genuardi's. "We aim to provide our customers with the convenient experience of one-stop-shopping for groceries and a movie. This gives our customers another reason to visit our stores and catch up on the newest movies without having to make an additional stop."

Customers can rent and return their DVDs at any participating Genuardi's. There are no membership fees or late fees.

"We are expanding across the nation with Safeway and its divisions like Genuardi's," said Sheri Tate, vice president, sales operations, DVDPlay. "Bringing fun, value and convenience to Genuardi's customers is part of the value proposition DVDPlay brings to each store."

Customers can rent and return the newest DVD movie releases from the easy-to-use DVDPlay kiosk in as little as sixty seconds. Customers simply make their DVD movie selection, swipe a major credit or debit card and receive their DVD.

The regular price is $1.49 the first night, 99¢ each extra day. It's roughly one third the cost of a rental at traditional DVD outlets if returned the next day. DVDs can be returned to any participating Genuardi's store.

About Genuardi's

For more than 80 years, Genuardi's (www.shop.genuardis.com) has been serving Delaware Valley consumers. More than 5,000 team members operate 37 stores throughout Pennsylvania and New Jersey, carrying on the company traditions of freshness, quality, great value and legendary customer service. Genuardi's has been a division of Safeway Inc. since February 2001.

About DVDPlay

DVDPlay (www.dvdplay.com) offers consumers unparalleled convenience, low rental prices and new release DVD movies at kiosks located in grocery stores, convenience stores, military bases and apartment complexes. The easy-to-use, credit card-enabled kiosks hold more than 500 DVDs, ensuring that there will be plenty of the hottest new releases available. DVDPlay kiosks are located across the US and Canada with 2,250 expected to be installed by the end of 2007.

Dominick's, Jewel touting DVD vending; Rental kiosks to feature per-night fee on movies.(News)

From: Crain's Chicago Business Date: March 19, 2007 Author: Slania, John T.

CRAIN'S Byline: JOHN T. SLANIA

Coming soon to a grocer near you: DVD vending machines.

Dominick's Finer Foods LLC and rival Jewel Food Stores are racing to install DVD rental kiosks, offering customers new movie releases at low prices.

The grocers like the machines because of their low overhead and because they occupy underused space at the front of stores. They also have the potential to drive sales because they require shoppers to return to the store to drop off their rentals.

Dominick's says that being the first to offer DVD rental kiosks may help it siphon customers from Jewel.

"When you're first, it's usually an advantage," says Jeffrey Norkiewicz, vice-president of marketing execution for Dominick's. "That may be the one thing that makes you turn left into Dominick's instead of right into Jewel."

So far, Dominick's has the lead: Since February, it has installed the machines in about half of its 83 Chicago-area stores. Most locations should have them by mid-April. Jewel expects to begin installations by Monday, with plans to outfit most of its nearly 200 stores by the end of May, a spokeswoman says.

The kiosks feature roughly 70 new Hollywood releases, such as "Borat" and "The Departed." Each machine holds 500 DVDs. Customers pay by swiping a credit or debit card.

Dominick's features a kiosk produced by DVDPlay Inc. of Campbell, Calif. Customers pay $1.49 for a one-night rental, and 99 cents for each additional night. DVDPlay has about 1,000 units nationwide, including in the network of stores owned by Pleasanton, Calif.-based Safeway Inc., the parent of Dominick's.

Jewel uses a system by Redbox Automated Retail LLC, based in west suburban Oakbrook Terrace. The kiosks charge a rental fee of $1 a night. Redbox has more than 2,200 units nationwide, including in stores owned by Jewel's parent, Minneapolis-based SuperValu Inc.

`growing niche'

Vending machines are a relatively new area of the U.S. DVD rental market, first making a splash in 2003 when McDonald's Ventures LLC, the investment group of the Oak Brook-based fast-food giant, acquired Redbox and began installing units in some of its restaurants. Since then, the kiosks have been installed in more supermarkets and drugstores, including some outlets of Walgreen Co. of Deerfield.

Yet vending machines contribute a small portion to the rental industry, which is expected to record $8.4 billion in revenue this year, according to Adams Media Research Inc., a Carmel, Calif.-based entertainment research firm. By yearend, there are expected to be about 5,000 kiosks nationwide, but they will capture less than 3% of the rental market, says Tom Adams, president of the firm.

"It's a growing niche, but I don't ever think vending machines are going to threaten video stores or online retailers, which have much greater selection and depth," Mr. Adams says.

Still, Dominick's and Jewel see many advantages to having the kiosks in their stores. The stores receive a percentage of each transaction. DVDPlay and Redbox maintain the machines, stocking new releases and making repairs.

Given the low margins of the grocery business, anything that can generate additional traffic is a plus, says James Hertel, senior vice-president of Willard Bishop Consulting Ltd., a Barrington grocery industry consultancy.

"If you can . . . create any incremental revenue, that's an advantage these days," Mr. Hertel says.

CAPTION(S):

About half of Dominick's 83 local stores have DVDPlay rental kiosks.

DVD PLAY i'm your new video store

DVDPlay Shows Off Kiosk Technology At Food Marketing Institute Show

DVDPlay accelerates growth with large install base in new Canadian and East Coast grocery locations

Chicago, IL 5/4/07 - Aisle 11, is where you get your favorite frozen pizza, aisle 13 you grab a six pack of soda and on your way out, you add the perfect compliment to your purchases-a movie. And DVDPlay, a Silicon Valley-based company, is making that possible for grocery shoppers across the nation with their red, five-foot tall, soda can-shaped DVD rental kiosk. The movie dispensing machines are located at the front of grocery stores such as, Safeway and their affiliate stores, Albertsons, and Kroegers. They are deployed throughout California, Arizona, Colorado, Oregon, Texas, Illinois, Pennsylvania and Canada.

"These machines are really catching on," said Dee Cravens, vp of marketing, DVDPlay. "We've seen tremendous growth over the past year and are exploring lots of new locations."

There are currently 1,200 DVDPlay kiosks operating in grocery stores today, and according to Cravens that number will double by the end of this year. "Our service adds value to the grocery business. People have to buy food, it's an essential part of life and if they can bring home a movie it saves them a second trip to the video store and money too," Cravens said. The DVDPlay kiosk rents movies for $1.49 the first night and .99 cents each extra night.

"Shoppers love us because we're convenient and grocers love us because we give their customers another reason to come back to the store when they return the movie," Cravens said.

To experience DVDPlay in action, the company will be showing off their kiosk at the Food Marketing Institute (FMI) Show in Chicago, IL, May 6th-8th in booth 3822.

About DVDPlay

DVDPlay's (www.dvdplay.com) easy to use, credit card enabled kiosks hold more than 500 DVDs, ensuring that there will be plenty of the hottest new movie releases available.

Movies can be rented in less than 60 seconds. DVDPlay kiosks are conveniently located in stores and restaurants that customers typically visit two to three times per week. There are more than 1,200 DVDPlay kiosks located in 35 States and Canada. DVDPlay's kiosks are networked and powered by patent-pending software that enables dynamic pricing, promotions, inventory management, advertising and movie trailer insertions as well as the capture and measurement of key business metrics. DVDPlay kiosks meet all federal and state regulations including UL, FCC and ADA certification.

i'm your new video store

DVDPlay And Safeway Promote New Movie Releases Using In-Store Kiosks

Lanham, Md. - Safeway and DVDPlay have joined forces to offer customers the latest Hollywood DVD rentals inside selected local stores in the mid-Atlantic region. The DVDs will be available through easy-to-use, red DVDPlay kiosks located in the front of the participating Safeway location. Shoppers will be able to select from more than 100 movie titles.

"The hottest hits of the season are in our stores," said Safeway's Roger Herding, director of marketing, Eastern Division. "We aim to provide our customers with the convenient experience of one-stop-shopping for groceries, and now they can add a movie. This gives our customers another reason to visit our stores and stay current with the latest movie releases without having to make an additional stop." Customers can rent and return their DVDs at any participating Safeway. There are no membership fees or late fees.

"We are expanding across the nation with Safeway," said Sheri Tate, vice president, sales operations, DVDPlay. "Bringing fun, value and convenience to Safeway's customers is part of the value proposition DVDPlay brings to each store."

Customers can rent and return the newest DVD movie releases from the easy-to-use DVDPlay kiosk in as little as 60 seconds. Customers simply make their DVD movie selection, swipe a major credit or debit card and receive their DVD. New releases are added to machines each Tuesday and can be available for four to six weeks. The regular price is a $1.49 the first night, $.99 each extra day, roughly one third the cost of a rental at traditional DVD outlets. (Editor's Note - A list of participating Safeway stores is attached on a separate page).

DVDPlay (www.dvdplay.com) offers consumers unparalleled convenience, low rental prices and new release DVD movies at kiosks located in grocery stores, convenience stores, military bases and apartment complexes. The easy-to-use, credit card-enabled kiosks hold more than 500 DVDs, ensuring that there will be plenty of the hottest new releases available. DVDPlay kiosks are located across the US and Canada with 2,250 expected to be installed by the end of 2007.

Safeway Inc. (www.shop.safeway.com) is a Fortune 500 company and one of the

largest food and drug retailers in North America, based on sales. The company operates 1,761 stores in the United States and western Canada and had annual sales of $40.2 billion in 2006. The company's common stock is traded on the New York Stock Exchange under the symbol SWY.

Safeway's Eastern Division employs approximately 16,000 people and operates 179 stores, including 38 Genuardi's Markets in Southeastern Pennsylvania and New Jersey, with 77 Safeway stores in Maryland, 44 in Virginia, 16 in the District of Columbia and five in Delaware.

Q2 2007 Netflix Earnings Conference Call - Final

From: Fair Disclosure Wire Date: July 23, 2007

FDCH e-MEDIA Fair Disclosure Wire

07-23-2007

OPERATOR: Good day, everyone, and welcome to the Netflix second quarter 2007 earnings conference call. Today's call is being recorded. And at this time, for opening remarks and introductions, I'd like to turn the program over to Ms. Deborah Crawford, Director of Investor Relations. Please go ahead, ma'am.

DEBORAH CRAWFORD, DIRECTOR OF INVESTOR RELATIONS, NETFLIX, INC.: Thank you, and good afternoon. Welcome to Netflix second quarter 2007 earnings call. Before turning the call over to Reed Hastings, the company's Cofounder and CEO, I'll dispense with a customary language and comment about the webcast for this earnings call. We released earnings for the second quarter at approximately 1:05 PM pacific time. This earnings release which includes a reconciliation of all nonGAAP financial measures to GAAP and this conference call are available at the company's investor relations website at www.netflix.com. A rebroadcast of the call will be available at the Netflix website after 3:30 PM pacific time today. We'll make forward-looking statements during this call regarding the company's future performance. Actual results may differ materially from these statements due to risks and uncertainties related to the business. A detailed discussion of such risks and uncertainties is contained in our filings with the Securities & Exchange Commission, including our annual report on Form K -- 10K filed with the commission on February 28, 2007. And now I would like to turn the call over to Reed.

REED HASTINGS, COFOUNDER, CEO, NETFLIX, INC.: Thank you, Deborah. And welcome to everyone. In the second quarter, Netflix exceeded our profit forecast and delivered one of our most profitable quarters ever. The seasonality in our business means that the second quarter is typically our most profitable and slowest growing quarter of the year.

In the past, slow growth meant a 5% to 10% sequential increase in subscribers. This quarter, due to increased competition, it meant a 1% decline in subscribers. We expect to return to positive sequential growth in the second half, even assuming no relief from the competitive environment due to higher seasonal growth in the second half of the year compared to the second quarter. Partially due to the battle with our competition, the on-line rental segment as a whole is growing quite remarkably. In the year between mid 2005 and mid 2006, on-line rental expanded by a healthy 2.5 million net additions. But in the most recent 12 months, from mid '06 to mid '07, on-line additions accelerated to approximately 3.7 million subscribers. As internet commerce continues to mainstream and as video stores close, the prospects for on-line rental to add over 4 million net new subscribers over the next year are strong. If on-line rental stays on that 4 million per year track for three years, that would be more than 20 million on-line subscribers by mid 2010. If on-line rental achieves these subscriber levels, then the mass closures of the largely fixed-cost video stores will help make on-line rental even more pervasive. Within just a few years, much of the DVD rental market will likely be on-line rental.

And despite alternatives to DVD rental, such as video on demand and DVD sales, domestic DVD rental from Blockbuster, Movie Gallery and Netflix combined grew from Q1 '06 to Q1 '07, the last published quarter. In other words, on-line rental growth more than made up for shrinking store rental revenue. Consumers are not shifting away from DVD rental. But they are shifting from store-based DVD rental to on-line DVD rental. Consumers are choosing on-line DVD rental in ever greater numbers due to its superior value, convenience and selection.

And the on-line one distribution center per region model is significantly more efficient than the one video store per neighborhood model.

This year Blockbuster realized the criticality of on-line rental and changed its strategy to dramatically increase investment in on-line rental by giving away one free store rental for every on-line rental.

By literally giving away the store, they have gained on-line subscribers at the cost of big financial losses. Earlier this year, we thought Blockbuster might sustain these steep losses for only a quarter or two as they did in 2005. So we maintained our profit goals and trimmed our subscriber expectations for the year. At this point, however, we believe it is prudent for us to assume that Blockbuster stays in the on-line growth-over-profits mode as long as they can, and, therefore, we're adapting our competitive posture, by shifting some profits to defend our share. If this assumption turns out to be too conservative, that should be upside for us.

As we look at how to grow our business, most efficiently, we make trade-offs between service levels, marketing levels and price levels.

For example, we are opening 10 or so new distribution centers this year, because we find improving service levels with faster delivery is a relatively efficient means of subscriber growth and retention.

Similarly, we are frequently testing lower price points to see if there is enough elasticity to pay for the price cuts. Last month, in June, we became convinced that we could cut the price of our two out unlimited program by $1, and it would substantially pay itself back through increased retention in increased organic growth, allowing us to spend less in marketing. We're very pleased with the results of that two out price cut.

And we're now extending that reduction to our one out and three out customers. At lower prices, we'll spend less acquiring subscribers than we otherwise would have because of the increased attractiveness of our lower priced programs. In other words, marketing reductions largely funds these price cuts. Our strategy evolution is shifting some profits into growth investments. For as long as our competitor runs their on-line service at a considerable loss. The tactics of our increased growth investments are higher service levels, lower pricing and slightly less marketing, because we believe that is the most efficient combination for Netflix at this point. Despite the shift of some profits into growth, our full-year subscriber guidance is down slightly, but not by as much as it otherwise would have been. We have shifted some profits into growth, but are attempting to avoid the trap of overreacting. At some point, our competitor will likely desire at least a modest profit on their on-line service. And we expect Netflix to enjoy greater growth and profitability at that time.

The market is large enough that there is room for two large, growing and profitable on-line businesses. The reason the current competition is so intense is the opportunity is quite large as consumers switch from store rental to on-line rental. Over the long-term, we think our advantages as an innovative internet company filled with great talent and

fueled by outstanding customer satisfaction are enormous. Couple that with the strength of our balance sheet and we believe Netflix is well-positioned to compete effectively and to emerge from the current battle strong, growing and profitable. Part of this optimism stems from the progress we're making in on-line video, which will grow slowly but steadily over the next 5 to 10 years. Usage tracking by compete.com already shows us as the leading on-line movie service by a wide margin. And our ability to combine on-line DVD rental and on-line video into one service gives us a significant competitive advantage. We are generating more on-line video viewing every month.

The next big step, delivering Netflix on-line video to the television, we expect to come together next year with a number of partners and we'll have more to say about that next year. One subscription service with two delivery methods is, we believe, the path to long-term leadership and profits. At this point, I'll turn the call over to Barry to give you some more color on our results.

BARRY MCCARTHY, CFO, NETFLIX, INC.: Thank you, Reed. And good afternoon, everyone. My prepared remarks will comment on our financial performance for Q2 and our earnings guidance for the remainder of the year. I'll also share some preliminary thoughts about guidance for 2008, after which I will conclude my remarks with a status update on the $100 million stock buyback program we announced last quarter.

As Reed mentioned, last quarter's results were mixed. Subscribers were in the low end of our guidance range and ending subs actually declined for the first time in our history, which was disappointing.

The good news is that slower subscriber growth was accompanied by lower marketing spending, which resulted in near record high net income. Significantly above the high end of our guidance for the quarter. Revenue for Q2 was in the low end of the range of our guidance. This resulted from the sequential decline in ending subscribers. ASP continued to decline as we expected, reflecting the popularity of our lower-priced plans. As in prior quarters, the three out, $17.99 a month program was our most popular offering. We expect ASP to continue to decline for the foreseeable future, until the mix of new subscribers and existing subscribers reaches equilibrium. I'll explain why this shift is driving expansion of our gross margin in a moment. Excuse me.

As we forecast on last quarter's earnings call, our gross margin declined sequentially in Q2. The primary reasons for that decline were one, the 2% increase in the first class mail rate we absorbed in May, and two, increasing costs related to our watch now on-line video feature, which we rolled out to our entire subscriber base during the quarter. With the growing popularity of our on-line video feature, we expect these costs to increase over the next two quarters, and reduce gross margins further as Netflix subscribers enjoy the immediacy of internet-delivered video. The on-line video costs are another example of the investment spending we talked about to drive increased value for Netflix subscribers. But our gross margin for the quarter was, in fact, better than we expected, because fulfillment and on-line video costs were less than we expected. And that brings us back to my earlier mention of the decline in ASP and the positive impact on our gross margin.

Overall, ASP declined about 3% sequentially in Q2. But that 3% decline was accompanied by a 6% increase in the revenue we earned on every paid disk shipment in the quarter which means profit margins are expanding with the decline in ASP, assisted by the seasonal decline in disk shipments and the growth of our lower priced plans.

Net income of $26 million grew 50% year over year and was 71% above the midpoint of our guidance for Q2. The majority of the outperformance were about 60% was due to slower subgrowth and lower marketing expense which accompanied that slower growth,

as well as the stronger than expected gross margin. The remainder of the outperformance were about 40% was due to our patent infringement litigation settlement with Blockbuster. This was a one-time payment with no ongoing stream of license fees.

The marketing group maintained their spending discipline again this past quarter, spending up to the marginal lifetime value of a subscriber to grow our business, which maximizes our total profit. To put the impact of our marketing spending in perspective, let's remember that with flat revenue of approximately $305 million in each of the last two quarters, we more than doubled net income from $10 million to $26 million, as we reduced marketing spending sequentially by $27 million or 1/3. Free cash flow in the quarter of $6.5 million was modestly positive after last quarter's negative free cash flow of $18 million, but would have been nearly breakeven without the Blockbuster settlement. The principal contributors to the improvement in cash flow were the $16 million sequential increase in net income, plus a decrease in prepaid expenses, combined with a reduction in both fixed asset and DVD purchases. Like last year, we expect comparatively strong cash flow in the second half of the year.

Today's earnings release introduces guidance for Q3 and Q4. Our guidance includes a downward revision in ending subscribers and net income for 2007. This was the second consecutive quarter in which Blockbuster's willingness to lose money on its Total Access program slowed our subgrowth. Because we think they operate Total Access at a 5% to 10% growth margin, the more subs they get the more money they lose after deducting -- deducting marketing and fixed expenses. Last quarter, I estimated their on-line business would lose more than $200 million this year. If they continue to operate their on-line business this way, we'll continue to operate in a challenging, competitive environment. As Reed mentioned, we're assuming Blockbuster continues on its current path. That means we expect continued pressure on our ability to grow our sub base profitably. So, while we were pleased with this quarter's near record net income, we're also feeling pressure to arrest the shift in market share and reaccelerate subgrowth. The increased investment in growth relative to profits that Reed spoke about today is another positive if modest step toward slowing the shift in market share.

On last quarter's earnings call, Reed told you that we needed to see an acceleration in our subscriber growth as compared with current trends to reach 20 million subs by 2012. And without an acceleration in subscriber growth and profit, we can't deliver the 50% annual earnings growth we once targeted for the business. In 2008, by way of example, we may see a decline in net income on a year-over-year basis. Two important assumptions underlie our expectations for 2008 the first is that the current competitive environment remains unchanged, and the second assumption that we significantly increase our investment spending and internet delivered video. As Reed indicated, we expect to debut internet delivery to the TV next year.

And that will involve increased investment primarily in content, if an increasing numbers of Netflix subscribers choose internet delivery. Last quarter, we announced a program to buy back $100 million of Netflix stock. To date, we have purchased 1.4 million shares at a cost of approximately $30 million. If the business performs as we expect over the next few quarters, we'll complete the buyback program by year end and finish the year with more than $350 million in cash and no debt on our balance sheet.

In summary, Q2 was our first quarter of declining subs and our first quarter with more than $25 million of net income, excluding the realization that the preferred tax asset in Q4 of 2005. The business model is performing well from a P&L perspective, but our growth has slowed in this rapidly growing on-line rental market. With Blockbuster losing more than $200 million a year to grow its on-line business, we're unable to grow subscribes as fast as we would like to and maintain strong profit growth. And so, we're gradually investing more resources to drive growth at the expense of profit. That's the

goal of the increased investment in growth Reed spoke about earlier.

To change the growth trajectory of our business by changing the competitive value proposition of our service.

Last quarter, I told you we valued profit more than growth. We saw that emphasis play itself out in last quarter's results. The profit growth outpaced subgrowth to such an extent last quarter that we think the pendulum swung too far. And our guidance for the remainder of 2007 reflects our decision to compete more aggressively for new subscriber growth than we did last quarter. When Blockbuster decides to operate its on-line business profitably, our financial results will improve also. But until that time, both subgrowth and earnings will remain under pressure. That concludes my prepared remarks, and now we'll open the phone lines to answer your questions.

OPERATOR: Thank you. The question-and-answer session will be conducted electronically. (OPERATOR INSTRUCTIONS) And we'll pause momentarily. Our first question will come from Barton Crockett with JPMorgan.

BARTON CROCKETT, ANALYST, JPMORGAN CHASE & CO.: Okay. Great. Thank you very much for taking the question. I wanted to ask, I guess, one thing I guess following up on the sort of -- [key] information from 2008. I take it at this point you're giving us some qualitative information saying you may see stepped up investment in the internet video and some of the competitive environment is unchanged. But you're not providing EPS guidance at this point for 2008, specifically. But I was wondering if you could provide us any qualitative sense with your baseline view is whether '08 is higher or lower than what you're seeing for '07. That would be the first question.

BARRY MCCARTHY: Well, I don't see it being any higher than current year and there is a possibility it will be lower and mostly what I see when I look across the southside research are forecasts for increases on a year-over-year basis. And I'm trying to signal I think that's -- we're really optimistic given the level of investment in growth we have planned to make in the business.

BARTON CROCKETT: Okay. Alrighty. And then second thing I was wondering about is, if we go through the changes in the guidance, it looks like the reduction to the back half after backing in the level of beat versus the second quarter and what you've printed here, something in the range of reduction of I guess in the $0.20 to $0.33 range. What is the principal driver of that? Is it the price reduction or is it lower subs than you had anticipated? In other words, how much of it is competitive versus a change in your pricing plan?

BARRY MCCARTHY: There's some of both, primarily related to pricing.

BARTON CROCKETT: Okay. And then the final thing, and then I'll jump off here. Blockbuster said in their presentations to lenders they've done some survey work that says that 60% of video renters, DVD renters, want a combination of store and on-line. 20% want store only. 20% want the on-line subscription only. Since their numbers are out there, I was wondering if you guys have any counterpoint to that, any research you've done which either supports or contradicts what Blockbuster is putting out there?

REED HASTINGS: Barton, it's Reed. Consumers want a value and if you give away a lot of free store rentals, I'm sure they respond positively to that as we've seen in the numbers. And I think really the issue is Blockbuster is willing to lose a lot of money to grow their share. And that makes it a tougher climate for us. And they could do that by, for example, having on-line only and cutting the price in half, or they could do that with $200 million of marketing, or they could do it with free store rentals. How they do it is not

that relevant. What's relevant is that they're willing to subsidize the business to a great degree because they feel that it is a wise course for them. So, again, it is the -- I think it has become clearer that on-line rental is going to become the dominant form of rental. And we're seeing a share scramble and it look like they think they were a little behind and so they got to invest a lot to catch up. But presumably, they'll be interested in profits in that business over time also.

BARTON CROCKETT: Okay. Alright. I've asked enough questions. Thank you, guys, very much.

OPERATOR: Our next question will come from Doug Anmuth from Lehman Brothers. Please go ahead.

DOUG ANMUTH, ANALYST, LEHMAN BROTHERS: Thank you. It seems like you think that you can shift the competitive landscape at least by some degree by lowering prices and then next year shifting more into digital. So digital is obviously a big part of the story in terms of the spending. But can you talk about what you're seeing so far in terms of churn rates or customer satisfaction with your instant viewing users? Then can you also talk about the impact you've seen so far of the BBI mail only product? Thank you.

REED HASTINGS: Sure, I'll take those in reverse order. In terms of the BBI mail only, they don't promote that. They promote integration with the store and we compete with Total Access. I doubt many people -- many consumers know that they have a mail-only program. So, I don't think that's a relevant competitive point for us. Second, you stated that the $1 price cut will make a difference now in the overtime instant viewing. The $1 price cut is one tactic. The other tactics that we're doing are improving the service levels throughout the business and those all get traded off against each other as ways to efficiently grow. So, I wouldn't put as much emphasis on the price cut as opposed to really again at the strategy level, what we're doing is shifting some profits over to be more competitive and some of that is going into price cuts. Some of that is going into service levels.

And then in terms of the retention impact in instant viewing, what we certainly believe is that more people use Netflix, whether that's DVD or instant viewing, the more they perceive they're getting a value.

And that those are the things that drive retention. And on-line viewing, because of the lack of mailing the disk, is inherently a lot more efficient way to deliver movies. So, we're pushing into that to harvest those increased deficiencies, but it is still at a relatively small volume again being on the PC only. So, we'll know more about it next year as we're getting closer to television access.

OPERATOR: Are there any further questions?

DOUG ANMUTH: No. You can go ahead.

OPERATOR: Thank you. We'll move next to Youssef Squali with Jefferies & Co.

YOUSSEF SQUALI, ANALYST, JEFFRIES & COMPANY: Thank you very much.

Barry, I was wondering if you could qualitatively comment on your '08 revenue. I think Q3, we're going see the first sequential decline in revenues and you're guiding for similar trend in Q4. How are you looking at '08 versus '07?

BARRY MCCARTHY: Hi, Youssef, I don't have any additional comments to make on '08. It's -- we haven't begun our planning process yet. I can say I know enough about the

business to have concluded that the street forecast I've seen look excessively optimistic. We'll talk about '08 on our fourth quarter call, probably, if we follow last year's pattern and not have more to say about it before then.

YOUSSEF SQUALI: Okay. And then the trend in your ARPU seems to indicate a pretty aggressive drop, I think in Q2 it was around $15.24. In Q3, at the midpoints, it is in the mid $14, and then it drops below $14. Are you baking in another price drop or just the mix shift toward lower priced plans?

BARRY MCCARTHY: Just mix shift. As we move towards equilibrium, the mix of new customers becomes the same as -- or nearly the same as the mix of the installed base.

YOUSSEF SQUALI: Okay. My last question for Reed. Reed, I was wondering why did you decide to settle the patent with BBI if you believed that your patent was strong enough to prevent them from continuing to expand their business? Going to hurt you in the short term at least?

REED HASTINGS: In any settlement, it is because the fact that they appear to both sides indicate that a settlement makes sense. So it made sense to us given the facts present at the time. And presumably it made sense to Blockbuster. That's why we're able to find mutual ground. And now we're both focused on growing the on-line rental market as fast as we both can.

YOUSSEF SQUALI: Okay. Thank you.

OPERATOR: And we move now to Mike Olson with Piper Jaffray.

MIKE OLSON, ANALYST, PIPER JAFFRAY & CO: Had a couple of questions on the on-line initiative for download. Basically, it seems like one of the biggest issues for on-line services is figuring out how to solve the last 10-feet problem in that you kind of alluded to it. Can you give us anymore flavor as far as how you're kind of looking at this and what are some of the potential options for you to solve that problem?

REED HASTINGS: Well, you're absolutely right that it is one of the biggest issues holding back the entire industry and we'll come forth with a variety of solutions next year. But it is going to be a slow evolution. This internet to the television isn't going to happen in one or two years, which is why we think on-line video grows slowly over the next 5 and 10 years for movies. It is because of the adoption cycle to get to the television won't be overnight. And if there is a slow adoption like that, steady over 5 or 10 years, it very much favors an incumbent such as ourselves that can make the investments and hybridize the program that is putting on-line and DVD together.

MIKE OLSON: Okay. That makes sense. And then just one question similar. As far as, right now I guess on the competitive front, the focus is on Blockbuster. But in download, Apple is probably going to be one of your bigger competitives. Can you just talk about how you feel your position relative to Apple and what would be your thoughts if Apple has a movie rental service on iTunes at some point?\ REED HASTINGS: Sure. Today there are three segments of on-line video.

There is an advertising supported segment we think will be quite large that is led by companies like YouTube and BC.com and a variety of sites. And then there's DVD purchasing, or rather movie purchasing, which is what Apple has been focusing on a $10 to $15 price point. Amazon's in that space. That makes sense as extensions to their businesses. And then there is a third segment around rental that we're the clear leader in it at this point. And so, that's how I see the segmentation.

To the degree you asked does Apple go with a transactional rental, that basically becomes a reimplementation of cable video on demand and hard to see how and why it gets traction, because it is like video on demand except you've got to buy an additional box for it.

But it doesn't offer anything beyond what you get on cable video on demand. So that's not particularly concerning. Remember, the DVD rental has always competed successfully against DVD sales, video on demand, etc. So it's a pretty large market, about $40 billion in the U.S., including the theatrical side. So there is a lot of room there for a number of approaches.

MIKE OLSON: Thanks. And then just one question for Barry. Any thoughts on tax rate for the next few quarters or are we going to stick at 41% or so?

BARRY MCCARTHY: Nominally, yes. Taxes will be less than half of that, but the nominal tax rate will be about 41%.

MIKE OLSON: Okay. That's it for me. Thank you.

OPERATOR: Tony Wible with Citi. Your line is open. Please go ahead.

TONY WIBLE, ANALYST, CITIGROUP: Hi. You guys talked about making some smaller changes to your marketing expenditures. What are you thinking about that on a seasonal basis? Would it still make sense to ramp up marketing a little bit more in peak seasonal time periods?

REED HASTINGS: Tony, sure, yes. Marketing spending will follow seasonality to a degree. That definitely makes sense.

TONY WIBLE: Okay. And I know it is still a little early for the high def format, but which percentage of your disk shipped now are high definition. And what does that cost typically run versus the the standard definition disk?

REED HASTINGS: Unfortunately, high def is still pretty small for us.

On number maybe it's 1% or something. That's true industry-wide. It is relative because of the small adoption. And we would like high def to be a big success. We're doing everything we can, that the studio dual adopts both formats. We think that's the right decision for the studio to support both formats, get the perception of the war over.

From a cost point of view, postage handling, all of that's identical, content cost is a little bit higher right now, but that's because it is so early adopter. So, I don't think it is going to be any higher once this becomes a mainstream format, but right now, I'm going to estimate that it runs maybe 10% higher per unit.

TONY WIBLE: Last question. Have your thoughts on international changed at all in light of the competitive environment in the U.S., I guess heightening, and seeing Blockbuster pulling more away from the international environment?

REED HASTINGS: Well, I agree that Blockbuster's pulling away from the international environment, but it hasn't changed our perspective on it. And certainly, our primary focus is growing the DVD subscriber base and the expansion into on-line video. And those ripe for on-line video are very much country specific.

TONY WIBLE: Great. Thank you.

OPERATOR: We go next to Heath Terry with Credit Suisse. Please go ahead, sir.

HEATH TERRY, ANALYST, CREDIT SUISSE FIRST BOSTON: Thank you. I was just wondering, you mentioned several times Blockbuster losing money on their offering. Based on the intelligence that you have, can you give us an idea of what you feel like they're losing either on a per customer basis or in a total basis, and how long, just again from your perspective, you think they're going to be able to keep that up.

BARRY MCCARTHY: Well, they have an earnings call Thursday, Heath. And so there will be a timely opportunity to pose that question to them.

They don't actually disclose that information. So, we make an educated, informed guess from what the models that we keep of their business that we hope gives us insight into the competitive environment. And we have said consistently this year that in total we expect the on-line business to lose north of $200 million chased by subscriber growth. So, if they end the year just south of $5 million, it could be as high as $230 million, if they're tracking closer to $4.5 million in their subs, it will be less. Now, as I said in my remarks, that I thought the -- I estimate that the gross margin on their on-line business including the cost of the in-store fulfillment for Total Access and less fulfillment cost, which is how we account for our on-line business is running in the 5% to 10% range. And I think they ran at a negative gross margin in Q1. They're making some slight improvements, that really their need is to be more structural changes in the value proposition to then convert the business to a moneymaker.

REED HASTINGS: Heath, we have the information to be able to estimate bottoms-up cost. From an outside point of view, you can take their store revenue and apply the gross margin that Movie Gallery generates. It's been pretty consistent. It is what store rental runs at. And from that, you can back into some top down numbers.

HEATH TERRY: Great. Thank you very much.

OPERATOR: Our next question comes from Gordon Hodge with Thomas Weisel Partners.

GORDON HODGE, ANALYST, THOMAS WEISEL PARTNERS, LLC: Yes. Good afternoon. Just wanted to dig in a little bit. And I may have missed a little bit of your comments, Barry, or didn't understand it well enough on gross margin because you handily beat our estimate there again in the quarter. And I'm curious about a couple of things. One, I think you mentioned that seasonally, usage was down which we would expect, but I'm wondering if you're losing -- if you can sense whether your you're losing high usage customers to Total Access, if that's the dynamic that seems to be playing out. And then also just wondering if maybe you could just review -- maybe go over it again just why you're able to absorb the postal increase and generate the margins that you are.

BARRY MCCARTHY: Well, the gross margin was more or less in line with our expectations. Clearly, we continue to make good progress as we have for many years in lowering on a per disk shipped basis, cost for fulfillment and content-related cost which is driven by effective merchandising on the site, which contributes to the long tail. We also benefited from some slightly lower credit card fees in the quarter. MasterCard revised our rate.

GORDON HODGE: Okay.

BARRY MCCARTHY: And those were the primary contributors, plus the seasonal change in usage, which we eluded to. I don't have any particular sight, nor do I think that there is a shift that's occuring with respect to hot users, frequent users of DVD. To the

extent that they're going to shift away from us and toward Total Access program, that's already taken place.

GORDON HODGE: Alright. Terrific. Another question if you don't mind.

Just on the marketing spending decision trade-off versus the decision to cut prices. It sounds like you saw some nice elasticity or some consumer response to the $13.99 price cut, or the move to $13.99, I should say And I assume the same was true at $4.99. Yet your guidance would suggest you aren't expecting a lot of elasticity in reaction to the price cut here today. Is the idea here just strategically to put pressure on Blockbuster throughout the year with this price cut with the view that maybe if you get some relief next year and maybe you entertain an ability to raise the price later on?

REED HASTINGS: It is Reed, Gordon. It is certainly not designed to put pressure on Blockbuster. They've got plenty of pressure on them.

It is designed to be more attractive to consumers. So, the brand and the category were very unknown four or five years ago.

GORDON HODGE: Yep.

REED HASTINGS: And so a much heavier investment in marketing was necessary. If you think from a high level in a big, competitive battle, where they're investing heavily in advertising on-line rental, we are -- we can sort of split the load in terms of the awareness of the category. There is over 10 million on-line renters today. They're telling their friends about it. There's all of these things that says the market -- you all need to more compete on value and less on promotion. I think that's the evolution that you're beginning to see. Again that the market is now 10 million total subscribers. So our actions are driven by how to grow our business as we're going through this competitive storm. Because, again, we and I think our competitor realized that on-line rental absolutely has the potential to be 20 million in three years and maybe quite a bit bigger beyond that. So we're doing the big share jockeying right now.

BARRY MCCARTHY: Gordon, this is Barry, and I would also add with respect of elasticity, it's helpful to remind yourself that decreasing significantly the marketing spending in order to offset some of the cost of the price decrease, and if we weren't doing that and could effectively deploy those moneys, you would see a different forecast for sub growth than you're seeing.

GORDON HODGE: Yep. Okay. That makes sense. Thanks.

OPERATOR: Our next question will come from Maurice Mckenzie with Signal Hill Your line is open.

MAURICE MCKENZIE, ANALYST, SIGNAL HILL GROUP LLC: Thank you for taking the question. I just have one. Can you discuss other elements of the competitive environment such as Redbox and the cable MSOs during the quarter, whether or not those had impact on overall sub growth?

REED HASTINGS: Sure. It's Reed here. Let's take them separately.

Redbox, DVDPlay, and The New [Release] I think are the three companies that are leading the kiosk business with these $1 a day rental in supermarkets, primarily. And from what we can tell by their public small base, they're growing nicely, they're all new release focus and will be an increasing pressure on video stores. And they're directly competitive with video stores, but not terribly competitive with ours, because we're much

more catalog oriented within the system. But they're still pretty small, so in the background, but take the significant pressure over the next three years, mostly due to negatively impact stores which of course has a positive impact for us. Then you mentioned cable, video on demand. Not much changing in that space. There is a movie or two that's coming (inaudible) to DVD, but across the year, that's not much of a change. And again, I mentioned that if you sum up Movie Gallery's, Blockbusters' and our rental revenue on a domestic basis, that it has actually grown from Q1 '06 to Q1 '07. So despite all of those various competitors, the consumers are sticking with DVD rental.

MAURICE MCKENZIE: Reed, just as a followup, are there any alliances that are particularly interesting to you, those that may expand your reach or penetration?

REED HASTINGS: I would say that our competitive view is that we should forecast forward in the on-line video, so if you see us doing various partnerships, we would be more inclined to do that in the area of which -- we're an internet company. We look forward on these things rather than trying to go tit-for-tat with Blockbuster on more their core area being store logistics. Today, stores are probably more relevant to most consumers than on-line video, partially because it's (inaudible) to the laptop. But stores are going to be less relevant over the next few years, and on-line video's going to be more relevant every year over the next five years. So we've got a great balance sheet. We're investing in on-line video. We're moving forward. And that's the way we look at the world.

MAURICE MCKENZIE: Reed, thank you very much.

OPERATOR: We go now to Jim Friedland with Cowen and Company.

JIM FRIEDLAND, ANALYST, COWEN AND COMPANY: Thanks. First on free cash flow. The guidance you said getting to $350 million in cash by year end implies that you have decent free cash flow in the second half.

So the first question is based on the new strategy, especially looking into '08, it sounds like you think you can continue to operate the business by generating free cash flow. The second question is on the expenses relating to the on-line video business and watch now. You said you get to 5,000 titles by year end and in the -- in Q2, the tech and dev spending went up pretty significantly sequentially. I know you don't want to give us guidance on stuff like that, but as we think about costs going into next year, what are going to be -- what's the primary driver in terms of increased expenses? Is it going to be the goal to get to 10,000 movies by year end and that's going to be the primary driver, or is it something in tech and dev? And then what specifically in tech and dev is driving that ramp? Thanks.

BARRY MCCARTHY: Well, the question to answer one, free cash flow positive in 2008 is, yes, we think we can operate the business with positive free cash flow. Answer to the second question related to tech and dev spending is there were some one-time fees which we incurred this quarter, and I expect the absolute level of spending to decline as compared with the second quarter in Q3 and Q4. The apparent ramp in spending will not be the ramp gone forward.

JIM FRIEDLAND: And on the availability of titles for watch now, again at 5,000 at year end, as you look out to '08, is there -- is the restriction in getting those titles up to say 10,000 a limit that the studios are putting out there because those are -- you're getting the titles that are available, or is it more you're just trying to grow it systematically so you don't kill the P&L?

REED HASTINGS: It's Reed here. Adding titles doesn't particularly cost us. It is the

actual viewing. So, the more people watch, the more we owe the studios, which is fair and appropriate. So, the big drivers would be if we had 500 really great titles, like we've had seasons of "The Office," the U.S. version of "The Office," that have been very popular. So, those drive up costs, but also increase satisfaction. So, our costs again are related to how much -- how successful we are promoting on-line video, and there is only very small costs, things like encoding, some fixed contract stuff, to the per title count.

JIM FRIEDLAND: Okay. That's helpful. Thanks.

OPERATOR: And we'll go now to Barton Crockett with JPMorgan.

BARTON CROCKETT: Great. I wanted to come back with a followup. I was wondering -- there's been some commentary about a level of price that Blockbuster might contemplate if they were to charge more for the in-store feature. Particularly, I think Antioco said at their annual shareholder meeting that, hypothetically, there could be a situation where they could raise their rates $2 for that. Our model is assuming a $3 price hike in the fourth quarter, at least at this point. What is your sense of the impact that would have on the Blockbuster -- the interest in the Total Access versus Netflix? Do you think that would be -- at that level of price, $2 to $3 where people are maybe taking four or five disks out of the store right now. But a $2 or $3 price hike for that , would that help you a lot or not? Have you done any work -- I was wondering if you could share some light on REED HASTINGS: Yes, it's Reed, here. Every dollar makes a difference.

$3 makes more of a difference than $2. $5 makes more of a difference than $4. So, it is pretty continuous. There is no big inflection points across there. And if they choose to do a price increase, that will rebalance the relative share growth to a degree, but they may choose not to. I mean it's anybody's guess at this point on how they look at the world. I think you can see the significance of their commitment in their P&L in the last two quarters, because they see that the consumers are voting for on-line rental and they need to [have some touch up there].

BARTON CROCKETT: Okay, great. And just on the guidance here for the back half. Can you give us some sense. I mean the churn is up year to year here in the second quarter. Are you assuming there is a comparable kind of year-to-year growth in churn in the back half?

BARRY MCCARTHY: We're assuming that the same seasonal pattern applies as last year. So, by way of example in the current quarter, churn was 4.6% up 20 basis points sequentially and it was up 20 basis points sequentially a year ago. But this year was about 30 basis points higher than it was last year. So, we are feeling the effects of competition, like we said we would. And we did anticipate that the effects of competition would diminish slowly over time. And that is still our view. Now, we'll have to see how today's announcement plays itself out in the market place in the form of churn.

BARTON CROCKETT: Okay. Great. Then also, the final question here.

What is the patent payment you got from Blockbuster. What line did that fall into on the income statement this quarter?

BARRY MCCARTHY: That was broken out separately in the release. I'm quickly thumbing through the P&L. Bear with me a moment. and I'll point you toward it.

BARTON CROCKETT: Was that an interest in, oh, here it is again in legal settlement. I see it.

BARRY MCCARTHY: Yes. Operating expenses, the last line, before total operating

expenses.

BARTON CROCKETT: I'm sorry. Thank you very much.

BARRY MCCARTHY: Sure.

BARTON CROCKETT: Okay, bye.

OPERATOR: We go now to Daniel Ernst, Hudson Square Research.

DANIEL ERNST, ANALYST, HUDSON SQUARE RESEARCH: Good evening. Thanks for taking the call. Three questions, if I might. First, G&A is up around 34%, it looks like year on year. Can talk about where the resources are being focused and is there a potential here to reverse that trend? And then two questions on the on-line market. Where are you now with -- if you looked at the on-line -- the watch now subscribers ex the male component of their service. Where would the gross margins come? You're following given usage and what it costs you to deliver technology and then I guess rev share back to studio and then romance that longer term, where do you see the economics of the digital delivery going? Is it more like rev share and less like DVD acquisition, or can you give me some color on what the economics of -- in all digital demand might look? Thanks.

BARRY MCCARTHY: Well, in terms of G&A, the trend is up in part related to some legal spending in the quarter. If litigation diminishes going forward, we'll see December [lease] there. We have expanded our investment in content group which is rolled up into G&A, and there has been some increased investment in systems related to the finance staff. I expect those to be relatively flat on a go-forward basis. In terms of on-line watch now related stuff, we'll kick that over to Reed.

REED HASTINGS: The cost per movie delivers are less on-line as you would imagine. And the good part is the studio gets the dominant part of the revenue -- the cost instead of splitting between the studio and the post office. So studios are happy with it, because it increases their percentage of the pie. Consumers are happy with it, because it is a mediate and because it costs less per movie to deliver. You asked about sort of the pricing structure and the margin structure in that market. And I think the market's just too immature to tell. Pricing is often competitively determined. It is one of the big reasons we're investing in the DVD subscriber base, because we think the magic combination for leadership and profits is combining DVD rental with on-line video and getting out of the pure commodities space of the on-line video players.

DANIEL ERNST: Thanks. Very helpful.

OPERATOR: Any further questions, Mr. Ernst?

DANIEL ERNST: No.

OPERATOR: Okay. We'll go now to Brian Pitz, Banc of America Securities. Please go ahead, sir.

BRIAN PITZ, ANALYST, BANC OF AMERICA SECURITIES: Great. Thanks. Can you give us some details on your marketing spending in the quarter?

Maybe your off-line versus on-line mix, as well as any color on the mix of on-line spending by type in terms of keywords, CPM, CPA? And then I've got a quick followup.

BARRY MCCARTHY: Yes, Brian, for competitive reasons, I'll defer -- we move between

all of those categories based upon what we perceive as the relative efficiency of those in the deals that we get, so it is fairly fluid. And it is relatively useful for proprietary knowledge for us.

BRIAN PITZ: Okay. And then just a quick one on -- you mentioned mail cost and the quarter up about 2%. First class mail, we know the postage, I think it was on May 14th, increased. Is the 2% because of the timing of the increase mid quarter? And can you talk about, going forward, how we should think about the increased cost of mail on a full quarter basis? Thanks.

REED HASTINGS: Well, on a per disk ship basis, it's about $0.04 to $0.02 each way. We don't actually break out the cost of postage and packaging. I don't have any comments except to say we'll pick up a full quarter's worth in Q3 and we picked up a partial quarter in Q2.

BRIAN PITZ: Great. Thank you.

OPERATOR: And that concludes today's question-and-answer session. At this time, I would like to turn the program back to Mr. Hastings for any closing remarks.

BARRY MCCARTHY: Thanks, operator. So, everyone, our revised guidance, of course, is based on the assumption that Blockbuster doesn't change course at all over the foreseeable future. And we don't know if that is too conservative or not. But we thought it is the most prudent assumption. What we can certainly see is that consumers are not turning away from DVD rental, but they are definitely switching from store-based rental to on-line rental, and that's apparent to all of the players in the market. So, it is likely to be a fairly intense competitive battle here, as people play for that big market over the next couple of years. So, with that, I would like to thank you for participating, and look forward to talking to you again in a quarter.

OPERATOR: Thank you, everyone, for your participation on today's conference call. You may disconnect at this time.

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Video store in a box Machines let shoppers pick up a movie with their groceries.(Business)(Around the malls)

From: Daily Herald (Arlington Heights, IL) Date: July 22, 2007

Daily Herald Byline: Kim Mikus

The latest method to rent a movie is as easy and cheap as using a Pepsi machine.

While at the grocery store picking up milk and bread, shoppers can now grab the latest flick from a vending machine at the front of the store.

Redbox, found at Jewel stores, and DVDPlay, housed at Dominick's, are movie dispensing machines that are becoming the hottest way to rent DVDs.

People are waiting in line to utilize them at some locations.

Some Jewel Redbox kiosks are renting more than 1,000 DVDs a week, according to Juanita Kocanda, manager of public affairs at Jewel. "We're looking to add a second machine at some stores," she added.

The vending machines hold 500 disks carrying anywhere from 80 to 100 titles.

Redbox, traditionally carrying newer releases, charges $1 a day, plus local sales tax. New movies are loaded into the machines on Tuesdays.

McDonald's Corp. and Coinstar Inc. co-own Redbox, based in Oakbrook Terrace.

California-based DVDPlay machines tend to carry a larger selection of older titles in addition to the new releases. The price tag is $1.49 before tax. Additional companies, including Houston-based TNR Entertainment, are hitting the market as well.

The proliferation of the machines comes at a time when rental stores are struggling.

The success of Netflix showed that consumers would rent movies on the Internet and have them delivered by mail. Video-on-demand cable companies are also thriving.

To compete, Blockbuster launched its own online rental program, Total Access, about eight months ago. At the end of the first quarter, more than 3 million subscribers signed on, said Blockbuster spokeswoman Karen Raskopf.

"The industry is changing," she said.

Blockbuster, which charges about $4 for a new release at its stores, has tested the vending machine concept but doesn't have plans to add them at this point. "If there's demand and it makes money, we'll consider it," Raskopf added.

Experts agree there is consolidation in the industry. And consumers demand convenience.

"There's nothing else in the industry that matches the convenience and value of Redbox," said Greg Waring, Redbox vice president of marketing.

With the new machines, there is no need to fill out a registration. All the user needs is a credit or debit card while using a touch-screen video monitor. The DVD emerges from a slot, packed in a plastic case. It's returned to the same slot.

"It's so easy to use," said Mundelein resident Pam Hanas, who switched from renting from the local video store to Redbox. "It's convenient," said the mother of two teenage daughters, who also use the Redbox currently being tested at a local Walgreens.

"We're growing quickly," Waring said.

There are about 4,200 Redboxes, with 1,400 of them in McDonald's and most of the others in grocery stores.

Customers can visit www.redbox.com to choose their favorite title online and reserve it to ensure it's there when they get to the machine.

There are no late fees with the new video machines, located both in and outside, depending on the location. Instead, the customer is charged another dollar every day the movie is out. After 25 days, the renter can keep the disk.

To return the movie, shoppers can go to any machine in the country with the same name.

"It's a convenience thing," said Amanda Schmidt while returning a video at the Jewel in Lake Zurich.

- Kim Mikus covers retail for the Daily Herald. She welcomes comments at (847) 427-4567 or at kmikus@@dailyherald.com.

Movie boxes

Redbox

- Owned by McDonald's Corp. and Coinstar Inc., based in Oakbrook Terrace.

- Started in 2004, hit this market in May.

- Has 4,200 locations; 2,800 in grocery stores; 1,400 in McDonald's

- Found at 240 area Jewel stores and select Walgreens

- Cost is $1 per day per rental.

- Carries between 80 and 100 recently released titles

DVDPlay

- Based in Campbell, Calif.

- Started less than a year ago, hitting Chicago market four months ago.

- Located in more than 1,200 grocery and convenient stores, large apartment complexes and U.S. military bases.

- Found in nearly 70 area Dominick's stores.

- Cost is $1.49 the first night, 99 cents each extra night.

- Features a mix of new releases and older titles.

Source: DVDPlay and Redbox

San Jose Mercury News (California)

June 24, 2007 Sunday

Herhold: Valley's top 10 bargains

BYLINE: By Scott Herhold Mercury News

SECTION: COLUMNISTS; Columnists; Local; News; Education

LENGTH: 1334 words

You've spoken. We've eaten. You've nominated. We've sifted. You've counted. We've saved. You've commanded. And we've paid heed.

After an extraordinarily rigorous process - OK, it was a group of us standing around arguing - we've come up with our list of the Top 10 bargains in Santa Clara County and its environs.

Notice that we say our list. There is no universal standard for a bargain. Price matters, naturally. Two of our bargains cost nothing. Value matters even more. Our rule was that a bargain had to cost less than $200.

Here, in no particular order, are the results from our in-house jury, which culled through more than 60 nominations.

THE VIETNAMESE SANDWICH

It's ubiquitous in the valley, and almost always good, particularly when it's grilled pork on a baguette. Our favorite is Dakao ($2) at 98 E. San Salvador St. in San Jose, which offers a nice mix of meat and seasoning. A couple of runners-up bear mentioning: Thanh Huong at 2050 N. Capitol Ave. ($2.75), and Phu Yen at Berryessa Road and Capitol ($2), the favorite of reader Marcia Covert.

CAMERA CINEMAS
10-TICKET DISCOUNT CARD

No single bargain got as many nominations, and for good reason. For $50, you get a 10-ticket card that can be used for any show other than Saturday after 6 p.m. at cinemas in downtown San Jose, Los Gatos and the PruneYard. In other words, you can see a first-run movie for $5. Among those urging you to try it were Carol Ginsberg, Estelle Kadis, Renee Horton and Scott Kochiyama. Available at the box offices. More information is at www.cameracinemas.com.

SAN JOSE GIANTS

In an era when major league baseball has priced itself beyond many budgets, there's a cheaper alternative at home: General admission tickets to the A-level Giants go for $7 to $10. "You can enjoy the best barbecue in town from a picnic table just a few feet from the action," writes reader Russ Reynolds. Visit www.sjgiants.com.

The Costco Hot DOG

Nothing could really budge it from our list: At $1.50 for the dog and a good-size drink, it remains the valley's original bargain, whatever the incidental damage to your diet. Unless you're a vegetarian, it's hard to go to Costco without considering it.

SILLIMAN CENTER

Newark's family aquatics center at 6800 Mowry Ave. is one of those places worth a detour, particularly if you have young kids. It offers a water play structure, two water slides, a lazy river

with inner tubes and a warm-water spa. The cost is reasonable: $7 for adults, $4 for children. Particularly good for birthday parties. Contact the center at (510) 742-4400.

THE GOOD EARTH CHOCOLATE CAKE

While the Good Earth restaurants have largely vanished, you still can order their fabulous cake ($16.95) by calling a Peninsula number, (650) 780-0660, and arranging to pick it up on Page Mill Road in Palo Alto at a nondescript office park. Believe us, it's worth the hassle and the price: The cake is delicious and the frosting is to die for. From a reader who prefers to be known only as Arthur W.

GYPSY CINEMAS

It's the new rage: Bring your lawn chair to watch a movie, often a classic, against the side of a building or a makeshift screen. Feel free to hoot at laughable lines. See your neighbors. Pay nothing. Among our favorite spots: downtown San Jose's San Pedro Square and the parking lot outside Orchard Valley Coffee in downtown Campbell. Visit www.downtowncampbell.com and www.sjdowntown.com.

BABY BULLET TRAIN

It's Caltrain's biggest success: By buying a 10-ride ticket, you'll pay $12.75 for a round trip between San Jose and San Francisco. You can't drive that cheaply. Even better, it takes only an hour (Palo Alto is another place with good connections). The Baby Bullet's only drawback is that it does not run on weekends. Visit www.caltrain.com.

CANTOR ARTS CENTER

One of the best parts of the Stanford museum is that it's free. But it also has intriguing exhibits, such as the recently concluded exhibit of Richard Avedon photos of the West and the work of Gordon Parks, an early photographer of the black urban experience and the civil rights movement. Open Wednesday to Sunday. Visit http://museum.stanford.edu. A suggestion from David Vossbrink, S.J. airport spokesman.

COSTCO PHARMACY

We could go on about the bargains at Costco (the apple pie is not at all bad), but one more thing shines: the mail service for its pharmacy, which already offers cheap generic prices. If you fill out a form online, then mail in hard copies of your prescription, the drugs will be delivered free to your home in six to 11 days. More information is at www.costco.com.

Here are the top 10 runners up:

FOOD:

Vicky's pupusas. For $1.99 each, they're terrific. At Vicky's Restaurant, 1536 W. San Carlos St., San Jose. Recommended by Mercury News food writer Aleta Watson.

Pizza-My-Heart, (various locations, including Los Gatos, Willow Glen, Saratoga and Campbell) For $5, you get a slice of pizza and a quality T-shirt. "You can feed and clothe your family at the same time," says reader Carol Ginsberg.

Aqui Cal-Mex Grill, 1145 Lincoln Ave., San Jose. "High caliber food for very reasonable prices," says one reader. No tipping involved.

Bulk herbs and spices at Whole Foods, (locations in Campbell, Cupertino, Palo Alto). Reader Mary Khan says you can get dried cloves, cinnamon, tarragon and other spices at per-ounce prices that are a fraction of what you pay for pre-packaged herbs at grocery stores.

Taco Bravo, 1950 S. Bascom Ave., Campbell. Good food at reasonable prices. Try the nachos and tacos. Best of all, adds reader Rod Diridon Jr., it's open until 3 a.m.

ENTERTAINMENT

Niles S & A silent films, 37417 Niles Blvd., Fremont. Shows silent movies every Saturday night at 7:30. Cheap admission: $5. A recommendation of reader Skip Rice.

A "minus-tide" beach walk west from Capitola Beach toward Pleasure Point, or east along Fossil Cliffs. Pick up a free tide book at any surf shop before you go. "Spotting whalebones and million-year-old fossils is an added bonus to the pleasure of tidepool tripping," says reader Sharon Reeves of Capitola.

Movies. Two other nominations worth considering: Classic movies at San Jose's California Theater ($5 and cheap popcorn) or bargain films at the Cinelux Plaza Theater on Winchester Avenue just north of San Tomas Expressway, regularly $6.50 before 6 p.m. and $8.50 after 6.

Theatre Works Dress Rehearsal. If you're a member of a non-profit group that has made a request to the Peninsula theater company, you can attend the Tuesday night dress rehearsal at Mountain View's performing arts center before a new show opens for free. Go to www.theatreworks.org for more information.

FAMILY / RECREATION

Santa Clara County Parks, Only 20 minutes from the city, you can find yourself on great hiking trails that make you feel like you're in the wilderness. One favorite with lots of history: The Almaden Quicksilver Park. For maps and more information, go to www.parkhere.org.

Deep Cliff Golf Cours, 10700 Clubhouse Lane in Cupertino. Not the most challenging golf course around, but a particular bargain for seniors: $20 gets you 18 holes plus a sandwich and a small drink.

GOODS & SERVICES

Target Pharmacy (various locations). $4 generic prescriptions. A recommendation from reader Bruno Stoerger

Thrift Box, 1362 Lincoln Ave., San Jose. "Quality merchandise at very reasonable prices," says reader Aurelia Gill. Benefits Lucile Packard Children's Hospital and Stanford University Medical Center.

Adult Education Classes. Learn English, study for a graduate equivalent degree, get vocational training, or obtain a motorcycle license. Prices are very good - sometimes free. Check out your local high school district for more. (San Jose Unified, Eastside Union, and Mountain View-Los Altos Union High School District are places to start).

Movie Rentals. Try DVDPlay kiosks at Safeway grocery stores. For $1.49 you can pick up a DVD and return it the next day by midnight. Limited to newer releases. A recommendation from reader Lauren Bird-Wiser.

Contact Scott Herhold at sherhold@mercurynews.com or (408) 920-5877.

LOAD-DATE: June 24, 2007

LANGUAGE: ENGLISH

PUBLICATION-TYPE: Newspaper

THE TRIBUNE
Found on SanLuisObispo.com
The San Luis Obispo Tribune (California)

July 20, 2007 Friday

SLO chamber director moves to PG&E

LENGTH: 512 words

Patricia Wilmore, the vice president and director of governmental affairs at the San Luis Obispo Chamber of Commerce for the past seven years, will join Pacific Gas and Electric Co. as senior governmental relations consultant for San Luis Obispo and northern Santa Barbara counties.

Wilmore will officially join PG&E on Aug. 6 and report to Tom Jones, governmental and public relations manager for the utility's office in San Luis Obispo.

"I'm really excited about the opportunity to go to work for a company of this significance and bring to it the experience and relationships I developed while working at the chamber," said Wilmore, adding that she plans to volunteer with the chamber.

The new position at PG&E will also leverage Wilmore's former experience as academic dean for Santa Barbara Business College and as an instructor at Santa Barbara City College, where she taught government, economics and writing, she said.

She and her husband, Jim, own Wilmore Auto Works in San Luis Obispo.

"Patricia has the trust and respect of the people in government and in business that she deals with. It's a role that takes years to develop," said Dave Garth, president and chief executive officer of the chamber. He will take over Wilmore's duties-- her last day Thursday--until a replacement is found.

--Ermina Karim

TechXpress of SLO gets high rating

TechXpress Inc. of San Luis Obispo, an information technolo- gy company, has attained an AAA rating, the highest possible, from the Better Business Bureau of the Tri-Counties.

The ratings, which range from AAA to F, are determined by a composite score of factors such as business type, length of time in business, compliance with competency licensing requirements and complaints.

About 11 percent of the 22,204 companies in the area that the Tri-Counties BBB covers earn the AAA rating, said Rick Copelan, president of the Tri-Counties BBB.

"This rating is a testament to the dedication of our current team," said Bryan Sarlitt, TechXpress founder and chief executive officer. "Customer satisfaction is our common goal and top priority. It's very gratifying to receive an acknowledgement of our efforts."

TechXpress and the TechXpress Training Center are at 3450 Broad St., Suite 101.

--Laura Ashbaugh

Morro Bay farmers market expands

The Morro Bay Chamber of Commerce will host a ribbon-cutting Saturday at the city's farmers market downtown.

The event celebrates an expansion of the market, which is growing a block longer, and recognizes the market's new name as the Morro Bay Chamber of Commerce Community Market.

The ribbon cutting will be at 2:45 p.m. at Morro Bay Boulevard and Main Street.

DVDs while you shop

Grover Beach Vons shoppers will now be able to rent movies on DVDs while they shop. The Vons at 1758 Grand Ave. in Grover Beach today will debut **DVDPlay,** an automated movie rental kiosk. The moves cost $1.49 to rent and are due the following day at any participating Vons store by closing time (or midnight for 24-hour stores). The system charges 99 cents for each day the movie is kept after the due date.

--Tribune staff report

LOAD-DATE: July 20, 2007

LANGUAGE: ENGLISH

PUBLICATION-TYPE: Newspaper

The Calgary Herald (Alberta)

May 12, 2007 Saturday
Final Edition

Safeway raises curtain on DVD rentals; Grocery chain testing kiosks in Calgary

BYLINE: Mario Toneguzzi, Calgary Herald

SECTION: CALGARY BUSINESS; Pg. D1

LENGTH: 745 words
62, ¶4,

A grocery store giant is entering the booming video rental industry with Calgary its pilot project market.

Canada Safeway has installed fully-automated DVD kiosks in 10 of its Calgary stores -- a first in Canada. The machines accept credit cards and feature $1.49 per night rental with no membership requirement. Safeway plans to install them across Canada in the next year.

Betty Kellsey, public affairs manager for Canada Safeway in Calgary, told the Herald the company wants to see how the marketplace accepts the concept.

"Our goal is to have about 200 locations operational within a year," said Kellsey. "So basically every store (in Canada) with a few exceptions will have the machines.

"And the only reason why a store would not have a machine is because of technical issues -- if we can't pull the line or get the proper wires. We hope to have most of our locations up and operating within a year if it goes well."

There are 35 Safeway stores in Calgary and area and 214 across Canada.

Kellsey said the company's research indicated one in three Canadians rent a movie each and every week and 68 per cent of Canadians rent movies at least once every three months.

DVDPlay is exclusively partnered with Canada Safeway in Western Canada. It is the leading operator of DVD rental kiosks with over 1,000 currently in operation across the United States with that number expected to increase to 3,000 kiosks by the end of 2007.

Spokesmen for other grocery store chains said they do not have video rentals in their Calgary stores.

"I have no doubt that time-pressed Calgary consumers will embrace the concept of DVD rental machines at Canada Safeway stores in the greater Calgary region," said Michael Kehoe, a Calgary retail real estate broker with Fairfield Commercial Real Estate Inc. "Local grocers are in a ruthless battle for market share and innovative new offerings such as DVD rentals, sushi bars and in-store bistros will enhance their value proposition to their customers."

Debi Andrus, assistant professor of marketing at the University of Calgary's Haskayne School of Business, said grocery stores operate mainly on their food items but these are "very low margins."

"So in order for them to continue to grow or maintain profitability that's why they have the wide range of services and the wide range of products so that they're able to balance the low margins with the higher margins," said Andrus.

"There's also a trend in retail

. . . in terms of self-service, and vending machines are self-service. So you marry your need for margins with the trend for self-service that's why this particular vending machine with DVDs makes sense for them to try to see if they can make some margin on that."

At the Safeway kiosks, there are no late fees for customers who fail to return movies. It's $1.49 each night the DVD is kept. Customers can return DVDs to any participating store -- not just the location they rented from. They are fully-automated kiosks, credit-card enabled, and no exchange of cash is required.

The machines are stocked with new releases every Tuesday and have up to 100 titles in every kiosk.

They are located at the front of the stores.

Kellsey said the new concept was launched in Calgary because this is Canada Safeway's head office and "we know that Calgary is such a thriving marketplace.

"We thought it would be the best place to test this type of product," she said.

On the machine is a sign that says "i'm your new video store" and a three-step process -- touch screen to select movie; swipe payment card to rent; return movie in slot below.

Payment can be made through American Express, MasterCard or Visa. A receipt can also be sent to your e-mail address.

"One thing that we've learned is when people go grocery shopping, particularly on the weekends, one of their common additional stops that they make is to their local video store," said Kellsey. "So our goal would be to encourage people to come to Safeway to not only buy their groceries but also to pick up their DVD at the same time. It's a very family-oriented, entertainment-oriented package. And there's no question about it. We want to become a destination. So when people are buying their pop and their chips and their goodies and their snacks and they're entertaining, it's one-stop shopping."

Kellsey said the company's research into the video market in Canada also found that people are turning back to their homes for their focal point for entertainment.

mtoneguzzi@theherald.canwest.com

LOAD-DATE: May 12, 2007

LANGUAGE: ENGLISH

GRAPHIC:
Colour Photo: Stuart Gradon, Calgary Herald; Betty Kellsey, public affairs manager for Canada Safeway, shows off the new DVD vending kiosks available at 10 Calgary stores. ;

DOCUMENT-TYPE: Business

PUBLICATION-TYPE: Newspaper

National Post's Financial Post & FP Investing (Canada)

February 6, 2007 Tuesday
National Edition

An easy pick: Movies via cable, satellite or internet download threaten, but for now the automated dvd rental dispenser is still best for your thriller

BYLINE: Peter Morton, Financial Post

SECTION: FINANCIAL POST; Pg. FP3

LENGTH: 1379 words

The last thing Edmonton- born Greg Waring thought he would end up doing after he graduated in 1992 with an MBA from the University of British Columbia was work for a movie rental store.

But Mr. Waring does just that and a lot more as marketing vice-president for Redbox Automated Retai lLLC, which bills itself as the leader in the fast-growing U.S. market for DVD rentals. In fact, Mr. Waring runs several thousand DVD kiosks throughout the United States that kick out movies from automated soda-pop-like dispensers for a modest fee of US$1 a night.

Initially developed by Mc- Donald's Corp. in 2003 as a way of attracting late-day customers, Redbox was rolled out in 2004 in 120 restaurants in Denver but only now, three years afterward, has it been truly refined. Since then, the privately held company says it has emerged as the leader among DVD-kiosk sellers in a market that industry analysts say should hit annual sales of US$3- billion in two years -- equal to more than a third of the current total DVD rental market of more than US$8-billion a year.

"It's fascinating because Redbox was designed to find new ways of bringing customers to McDonald's, especially in the late afternoon and evening," Mr. Waring said in an interview from the company's headquarters in Oakbrook Terrace, Ill.

Redbox's bright red dispensing gmachines were an immediate success and the company, along with its rivals, have been on a roll ever since.

"We have 2,000 kiosks now and we will easily double that in coming months," Mr. Waring said. The goal, he said, is to have 10,000 DVD machines in the next three to five years.

It comes as no surprise in the hugely competitive home entertainment market that DVDs have quickly replaced VHS tapes as the prime source of home movies. But DVDs, too, may now be under threat from the latest upstarts -- digital cable and satellite delivery, as well as downloads from Internet sites to home computers.

While sales of DVDs rose just 1.8% in 2006 to US$16.6-billion, rentals continue to rise sharply. Last year, rentals were up 15.4% to US$7.5-billion from US$6.5- billion in 2005, according to the U.S. Digital Entertainment Group at the Consumer Electronics S h o w in Las Vegas. In addition, about 33 million DVD players were sold during the year, 11 million during the Christmas season alone. (More than 80% of U.S. homes now have a DVD player.)

But there are worries that DVDs sales and rentals may have peaked, especially in light of predictions that player sales will start to fall off this year by at least 1% to US$23.4-billion.

A recent report from Pali Research in New York said the film industry may be undercutting itself by pricing digital download rentals too low, forcing them to cut prices of DVD rentals as well to stay competitive.

"We are concerned about the long-term damage the industry could incur from expanding the rental market via digital downloads and/or video-on-demand," said Richard Greenfield, an analyst at Pali.

Entertainment distributors such as Netflix, an online service that delivers rentals by mail, are joining an increasingly crowded field that includes Amazon Unbox, i Tunes, Cinema Now, Movielink and Vongo.

But other analysts believe the days of widespread digital downloading are still far off.

"I'd say Netflix was stealing its rivals' thunder, but there's not a lot of thunder there to steal quite yet," said Joe Laszlo, a senior analyst with Jupiter Research specializing in online media. "It's a market where everybody from the studios to the download companies is still trying to figure out what works well."

"This is a very challenging time to be doing downloads," added Josh Bernoff, an analyst who covers entertainment at Forrester Research Inc. in Massachusetts. "None of the other people who've made movies available through the Internet have been successful.

While debate continues over the benefits of downloading versus brick-and-mortar rental stores, Redbox -- now a jointly owned by Coinstar Inc. and McDonald's Ventures LLC -- has found a comfortable niche that appeals to certainmarkets.

"Where they will really succeed is in areas that have a captive audience like a university," said Michael Pachter, an analyst with Wedbush Morgan Securities in Los Angeles.

Mr. Waring said Redbox, which manufactures its own vending machines, found that consumers liked the convenience and rental price available at an automated kiosk. So Redbox is expanding beyond restaurants -- McDonald's also owns investments in Chipotle and Boston Market chains -- into such grocery chains as the Giant Food Stores, one of the leading supermarket operations in the United States.

Redbox, of course, is not alone.

There are at least three other competitors trying to develop the DVD kiosk market in the United States. (Kiosks have been popular in Europe for several years but operate on a smaller scale.)

Four-year-old TNR Entertainment of Houston has more than 1,400 "The New Release" kiosks in grocery chains that include A&P, Food Lion and Kroger's in 30 states.

Richard Cohen, TNR's chief executive, said in an interview from Los Angeles that the technology has reached a point that makes DVDs kiosks "a superior business model to bricks-and-mortar operations."

All kiosks are linked to a central location that can analyze any technical problems instantly, he said. "Ninety percent of the problems can be fixed remotely."

Given that attribute, plus the convenience and pricing kioks offer consumers, Mr. Cohen, former president of MGM Entertainment division, believes TNR may be "doubling or tripling" in size this year, perhaps in Canada.

"And we are looking north of the border," he says. "It is a very sophisticated market."

Chuck Berger, chief executive DVDPlay of Campbell, Calif., said his company, which boasts sales growth of 200% last year, is pushing into Arizona. "It's amazing how fast a machine catches on once we put it into a store," said Mr. Berger.

Vancouver-based DVDNow Kiosks Inc., which distributes its machines through partnerships, says it plans to have 1,000 locations by the end of 2007. (There are only a handful now.) Unlike its competitors, it will sell or lease the machine to a store owner. Typically, a kiosk costs about US$18,000 and DVDs are rented through a number of distributors.

"There's no question that Red Box and DVDPlay are experiencing phenomenal results, with growth many, many times the industry average of a traditional video store," said Scott McInnes, chief executive of DVDNow Kiosks.

"We make it easy for a smaller entrepreneur to participate and profit from the explosive growth of the DVD rental kiosk industry," he said in an interview.

The success of the DVD kiosks is based on a simple formula --convenience and pricing.

Redbox and others charge US$1 a night for maximum of 24 nights. If the DVD is not returned then, it is considered sold and a consumer's credit card is charge US$24.

Each kiosk, with a one-metre by two-metre "footprint," holds about 500 individual DVDs of more than 70 titles. The kiosks, connected via high-speed Internet to head office, are maintenance free for the stores, which typically collect between 10% and 20% of the revenue in exchange for the space.

"In addition, consumers can go to the Internet site, lock in the movie they want and pick it up at any kiosk," says Mr. Waring. "And the DVD can be returned to any kiosk."

Food stores like the turn-key aspect of the operation since many abandoned their attempts to offer videos. "It's just a really cumbersome operation to have a video department," said Nikki Daly, a spokeswoman for the Safeway food chain.

Hard numbers are difficult to come by since the DVD kiosk companies are privately held.

But Mr. Waring said the 150- employee Redbox has to date rented 30 million DVDs at the rate of three million a month to its four million customers. (So far, Redbox has no immediate plans to move into the Canadian market.) Co-owner Coinstar said DVD rental devices are among its most profitable machines, outranking its coin counting, vending and ATMs combined.

While the DVD kiosk competition is increasing, Mr. Waring said Redbox is "clearly the leader" -- its sales are more than double its rival. "Our competition is the Blockbusters and Netflix," he said. "Those are ones we're after."

pmorton@nationalpost.com

LOAD-DATE: February 6, 2007

LANGUAGE: ENGLISH

GRAPHIC: Black & White
Photo: George Frey, Getty Images; A McDonald's customer in Utah rents a DVD from a soda-pop-like dispenser that will charge him US$1 a night and allow him to return it to any other Redbox in the neighbourhood. Black & White
Photo:; (See hardcopy for Photo Description) ;

DOCUMENT-TYPE: Business

PUBLICATION-TYPE: Newspaper

Award Description

The Frost & Sullivan Product Innovation of the Year Award is presented each year to the company that has demonstrated excellence in new products and technologies within its industry. The recipient company has shown innovation by launching a broad line of emerging products and technologies.

Research Methodology

To choose the recipient of this Award, the analyst team tracks all new product launches, R&D spending, products in development, and new product features and modifications. This is accomplished through interviews with the market participants, and extensive secondary and technology research. All new product launches and new products in development in each company are compared and evaluated based on the degree of innovation and customer satisfaction. Companies are then ranked by number of new product launches and new products in development.

Measurement Criteria

In addition to the methodology described above, there are specific criteria used to determine final competitor rankings in this industry. The recipient of this Award has excelled based on one or more of the following criteria:

- Significance of new product(s) in its industry
- Competitive advantage of new product(s) in its industry
- Product innovation in terms of unique or revolutionary technology
- Product acceptance in the marketplace
- New products and/or value-added services provided to customers
- Number of competitors with similar product(s)

2007 North American DVD Rental Market
Product Innovation of the Year Award

Award Recipient – DVDPlay

The 2007 Frost & Sullivan Product Innovation of the Year Award in the North American DVD rental market is presented to DVDPlay. DVDPlay, which is the pioneer in the automated DVD rental machine market, offers unparalleled customer service through its stand-alone DVD rental machines. New DVD rentals every week, competitive pricing, price discounts, ease of renting and returning DVDs, and attractive product promotions have created a niche for DVDPlay in the competitive $10 billion North American DVD rental market.

Company Overview

DVDPlay, headquartered at California, is the world's first manufacturer of automated entertainment machines (AEMs). AEMs are stand-alone DVD rental machines that can be remotely operated and managed. The founders, Bill Barber and Phil Tomasi, built the first AEM in 1999 with the idea of automating the video store experience. DVDPlay currently has 1,000 kiosks located in 35 states in the United States and Canada. The company plans to have 3,000 kiosks by the end of 2007.

Major investors that have an important stake in DVDPlay and thereby drive its growth include:

- Emergence Venture Partners
- El Dorado Ventures
- Palo Alto Venture Partners, and
- Vanguard Ventures

In 2006, DVDPlay raised $20 million in venture funding. All the above venture capitalists participated equally in the funding. With this funding, DVDPlay has so far raised approximately $40 million to provide impetus to its growth plans. The latest funding is intended to increase the number of DVD rental kiosks. In addition to the

venture funding, DVDPlay has also made lease-financing arrangements to support its installations, which are expected to be made available during 2007.

Salient Features of DVDPlay Kiosks

Some of the salient features of the DVDPlay kiosks (*DVD rental machine*), which have transformed the working of the DVD rental industry and have immensely benefited customers through the following:

DVD Renting Made Easy with DVDPlay Kiosks

Kiosks occupy lesser space than video stores and help the customer to rent a movie in just 60 seconds, including choosing a movie category, selecting the movie, and making payment through debit/credit card. This process is less time-consuming when compared to video stores, wherein customers need to stand in queue and wait for the service staff of the video store to make the entry regarding the movies selected, check the discs, and verify the membership. In addition, if debit/credit cards are used, the staff needs to enter the PIN code, or collect cash before delivering the DVDs.

DVDPlay provides the world's smallest kiosks that occupy 5.5 square feet of space. Customers can choose the category of the movies and select the movie that they would like to rent. This is made possible because the AEMs have a touch screen to facilitate selection. The selected movie is delivered through a slot available in the kiosk. The payment, with respect to the movie chosen, can be made using debit/credit cards. The kiosks hold more than 500 DVDs. The user-friendly kiosks have thus simplified the DVD rental mechanism.

The DVDPlay kiosks use patent-pending software that helps in providing promotional offers to customers, facilitating real-time inventory management, advertising, and providing new movie trailers.

Kiosks also represent a paradigm shift in the manner in which the DVD rental market has been functioning, that is, from online rentals/video stores to kiosks. This again underscores the fundamental change in the revenue stream to the industry.

Figure 1-1 illustrates the comparative advantages of DVDPlay kiosks over the online DVD rental business in the North American DVD rental market in 2007.

Factors for Comparison	DVDPlay Kiosks	Online DVD Renting
Registering	Customers need not fill application forms.	Customers will have to register online with the company providing DVDs for rent.
Delivery time	Delivery of DVDs is through a slot on the kiosk.	DVDs are shipped in one or two business days.
Returning the DVDs	DVDs can be returned by placing them in the return slot available on the kiosk.	DVDs need to be mailed back to the provider or returned to the respective physical store.
Ease of Rentals	Customers can rent DVDs from kiosks located at grocery stores, convenience stores, restaurants, and apartment complexes.	Request for DVD rental is to be made online, and DVDs are shipped to the customers' mailboxes.

Source: Frost & Sullivan

Promotional Offers

DVDPlay charges $1.49 per DVD rental and subsequently 99 cents for the rentals. The prices charged by DVDPlay are less than half that charged by the traditional video retailers for new DVD titles (traditional video retailers typically charge in the range of $4 per DVD). Moreover, DVDPlay provides several promotional offers to its customers. The promotional offers at the kiosks include the following.

i. **New releases every Tuesday:** DVDPlay provides DVDs of new movie releases every Tuesday. The DVDs are made available at the kiosks from 12 AM.

ii. **Add-on DVD:** This offer represents a good opportunity for customers frequenting the DVDPlay kiosk. After the customer rents 10 DVDs from the kiosk, the next DVD is provided free of charge for a night. A promotional code

(PromoCode) is issued to the customer to avail of a discount for the DVD rental. Customers who leave their e-mail ids at the kiosks get the PromoCodes by e-mail. PromoCodes can also be received through online and off-line marketing campaigns. (Off-line campaigns include newspapers, radio, and in-store cross-promotions.)

iii. **Option for Flexible Returning of DVDs:** DVDs can be returned to the DVDPlay kiosks of the same type. For example, a DVD rented from Safeway (a supermarket chain in the United States) can be returned to the DVD kiosk of any other participating Safeway.

iv. **Special Offer on Mondays:** DVDs can be rented for 99 cents on all Mondays at all DVDPlay kiosks.

Other product promotions from DVDPlay include the following.

i **'Sofa Star':** The picture of the family enjoying the movie rented from DVDPlay can be sent to DVDPlay, and the photo is published in its Sofa Cinema newsletter.

ii **Widget:** A widget is a mini application that can be included in a blog, Web page, or Web site. Customers can download this mini application by registering with DVDPlay. The widget displays information such as new movie releases on DVDs. After installing the widget, customers can participate in the contest conducted by DVDPlay to win prizes.

iii **Sponsoring San Jose Sharks Hockey:** DVDPlay is also a corporate sponsor of the San Jose Sharks Hockey team.

All these value-added promotions are DVDPlay's strategies:

- To create the necessary mind share among customers
- To promote the brand DVDPlay in the competitive North American DVD rental market

Location of DVDPlay Kiosks

DVDPlay kiosks are located at grocery stores, restaurants, convenience stores, and apartment complexes. The kiosks are strategically placed such that they are easily accessible, at places that customers frequent. Since kiosks are located at places where other essentials are also available (such as a convenience store), customers can rent the DVDs along with other purchases thereby making their shopping convenient. DVDPlay kiosks have therefore gained good acceptance among customers.

DVDPlay has made a successful foray into Arizona and is likely to target California, Texas, and Florida for increasing its regional presence and furthering its growth plans.

Chart 1.1 illustrates the major features of DVDPlay kiosks in the North American DVD rental market in 2007.

DVD Rental Market: Major Features of DVDPlay Kiosks, DVDPlay (North America), 2007

Source: Frost & Sullivan

Cost Advantage and Value to Convenience Stores and Customers

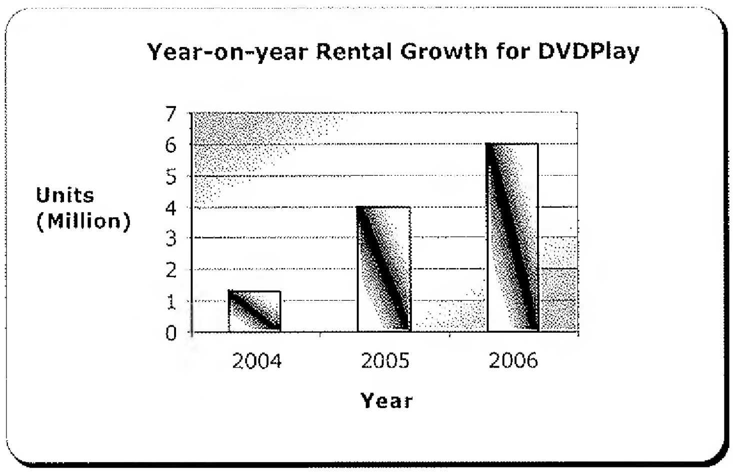
One of the significant advantages of kiosks when compared to video stores is the cost of operating the kiosks. Real-estate and labor costs compound the problems faced by video stores that also suffer from the fact that majority of the floor space is occupied by older and under-performing DVD titles. DVDPlay kiosks thus offer significant benefits in terms of operational costs as real-estate and labor costs are eliminated. In addition, kiosks have new DVD releases, thereby effectively using the kiosk space and enabling customers to rent new DVD releases with ease. DVDPlay kiosks score highly, much to the satisfaction of the convenience stores that house these kiosks, as the entire system is automated, including the inventory management.

Growth of DVDPlay

Approximately 70 percent of Americans prefer watching movies at home, and 90 million U.S. homes have at least one DVD player. This represents a good opportunity for the DVD rental market. DVDPlay thus provides value to its customers by placing its kiosks at convenient locations, besides providing the customers with new DVD releases and discounts for the DVD rentals. Customers rented 4 million DVDs from DVDPlay in 2005. The number is significant as this represents a 200 percent growth in the rentals from 2004. In addition, the DVD rental market grew at the rate of 14 percent in 2005. By June 2006, DVDPlay reached the 5 million mark and had 6 million DVDs rented by the end of 2006. This shows the tremendous growth path of DVDPlay. Customer satisfaction is also evident from the increasing DVD rentals.

Chart 1.2 illustrates the year-on-year DVD rental growth of units for DVDPlay in the North American DVD rental market in 2007.

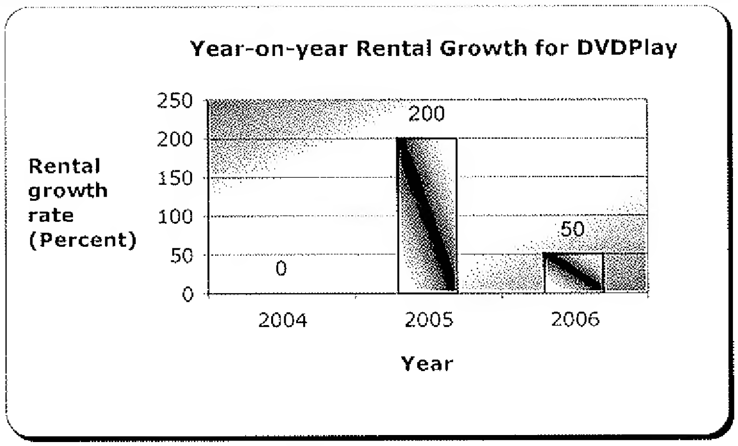
DVD Rental Market: Year-on-year DVD Rental Growth of Units, DVDPlay (North America), 2007



Source: Frost & Sullivan

Chart 1.3 illustrates the year-on-year DVD rental growth rate by percent for DVDPlay in the North American DVD rental market in 2007.

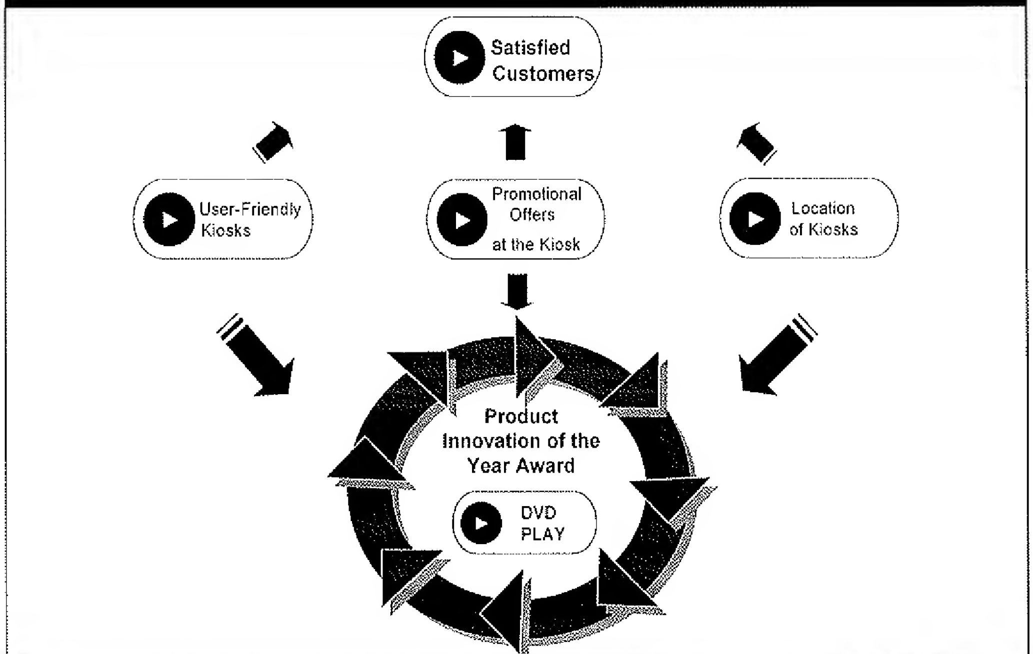
DVD Rental Market: Year-on-year DVD Rental Growth Rate by Percent, DVDPlay (North America), 2007



Source: Frost & Sullivan

Chart 1.4 illustrates the benefits of DVDPlay kiosks and factors contributing to the Frost & Sullivan Product Innovation of the Year Award for DVDPlay in the North American DVD rental market in 2007.

DVD Rental Market: Product Innovation of the Year Award, DVDPlay (North America), 2007



Source: Frost & Sullivan

Conclusion

DVD kiosks represent a fundamental change in the revenue stream for the DVD rental market. Kiosks provide more advantages compared to the online DVD rental business and traditional video stores. They ensure that the DVDs are delivered immediately to customers, unlike the online DVD rental business, where shipping requires one or two business days. DVDPlay kiosks occupy only 5.5 square meters of space, enabling them to be easily installed in convenient stores. This represents effective floor space utilization. Customers benefit considerably from the use of the DVDPlay kiosks, as they are strategically located at convenience stores and enable renting of DVDs along with their sundry purchases.

The pricing scheme and promotional offers from DVDPlay are expected to enhance its brand name and increase its customer base. By creating the ideal mind share through pricing and promotional strategies, growth in the established (California) and new markets (Texas and Florida) is likely to be as expected. The benefits offered by the kiosks to customers in an innovative manner (such as renting DVDs from convenience stores and automating the video store experience of the customers) make DVDPlay the worthy recipient of the 2007 Frost & Sullivan Product Innovation of the Year Award in the North American DVD Rental market.

About Best Practices

Frost & Sullivan Best Practices Awards recognize companies in a variety of regional and global markets for demonstrating outstanding achievement and superior performance in areas such as leadership, technological innovation, customer service, and strategic product development. Industry analysts compare market participants and measure performance through in-depth interviews, analysis, and extensive secondary research in order to identify best practices in the industry.

About Frost & Sullivan

Frost & Sullivan, a global growth consulting company, has been partnering with clients to support the development of innovative strategies for more than 40 years. The company's industry expertise integrates growth consulting, growth partnership services, and corporate management training to identify and develop opportunities. Frost & Sullivan serves an extensive clientele that includes Global 1000 companies, emerging companies, and the investment community by providing comprehensive industry coverage that reflects a unique global perspective and combines ongoing analysis of markets, technologies, econometrics, and demographics. For more information, visit www.frost.com.

Perrin, Heather

From:	Jens Horstmann [jhorstmann@dvdplay.com]
Sent:	Wednesday, September 19, 2007 2:18 AM
To:	Vock, Curtis; Perrin, Heather
Subject:	FW: key milestone: 10 mil rentals
Importance:	High

fyi - Jens

From: Jens Horstmann
Sent: None
To: Everyone
Subject: key milestone: 10 mil rentals
Importance: High

Congratulations to you all! We just crossed the line and rented our 10,000,000 millionth DVD!

A huge milestone that has been in the making for a long long time - and yet, fascinating to see when you watch the numbers how quickly it approached as we got closer! Just 3 hours ago we were still 1,000 rentals away .. when I joined DVDPlay in October 2002 it would have taken our five AEMs just about three weeks to rent those 1,000 discs! Wow, the world has changed.

I don't want to steal Chuck's thunder and just thank you all for the hard work and dedication without which such a milestone would have been impossible to reach!

Cheers to the next 10 million .. champagne, please!

Jens

TEJAS VIDEOS

QUICK FLIX DVD RENTALS

29 OCTOBER 2007

To whom it may concern:

This letter is in reference to DVDPlay Kiosks as well as to acknowledge the technological advantages of the kiosks. At the current time I have more than 180 DVDPlay kiosks operating on military installations in over 31 states to include Alaska and Hawaii. As you can imagine it would be a logistical nightmare if it were not for the special technological features which the DVDPlay machines provide.

The machines allow me to remotely access them to execute routine maintenance procedures such as inventory control as well as detecting any issues or problems. Also the remote capabilities allows pricing changes, provide promotional opportunities, and credit or refund customers instantly. These features alone afford me the opportunity to keep my resource costs below the norm due to the ability to remotely manage 95% of all tasks from one centralized location.

Another technological feature that the DVDPlay kiosks provide is the network capability via the internet. I.e. A customer can rent from one kiosk and return to any other kiosk in my control. This feature is a huge benefit due to my customer base being the military and they are very transient population.

Last, all of my machines are spread out across the nation on military bases. If a machine loses power or the data/phone connection drops the DVDPlay server which all of my machines are connected to will immediately email an alert to me there by allowing me instant notification of outages or problems. This real time alert notification definitely helps in us troubleshooting problems faster thereby getting our machines operational in shorter period of time.

In summary, the technological capabilities that the DVDPlay kiosks provide are essential and critical for running my business. Without these features, I don't believe it would be economically feasible for me to run my operations as I currently do today.

Should you have any questions, please feel free to contact me at 210-545-5230

Sincerely,

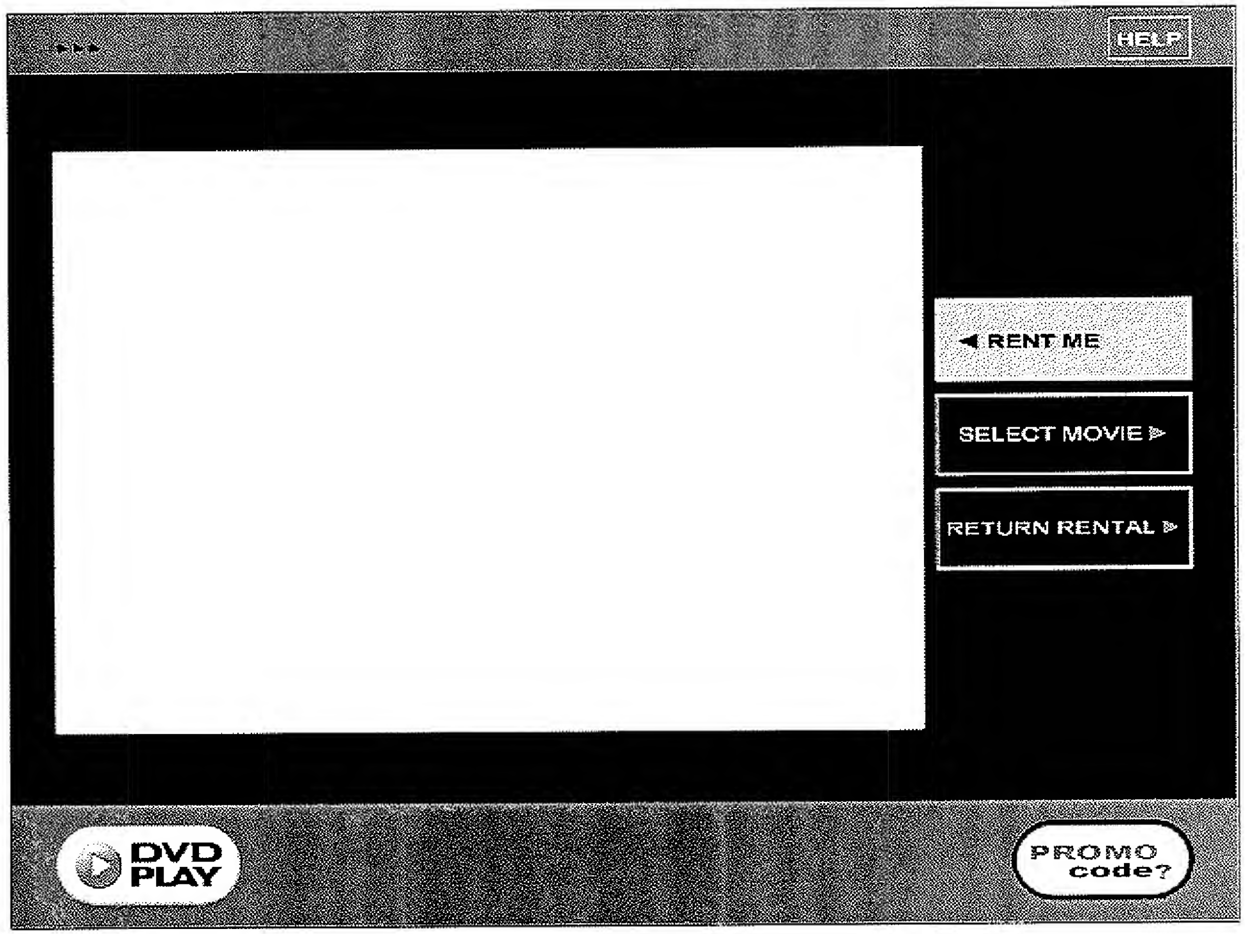
Von Shows, CEO
Tejas Videos
314 E. Nakoma Suite W4
San Antonio, TX 78216
Tel: 210-545-5230
FAX 210-545-7242

EXHIBIT C

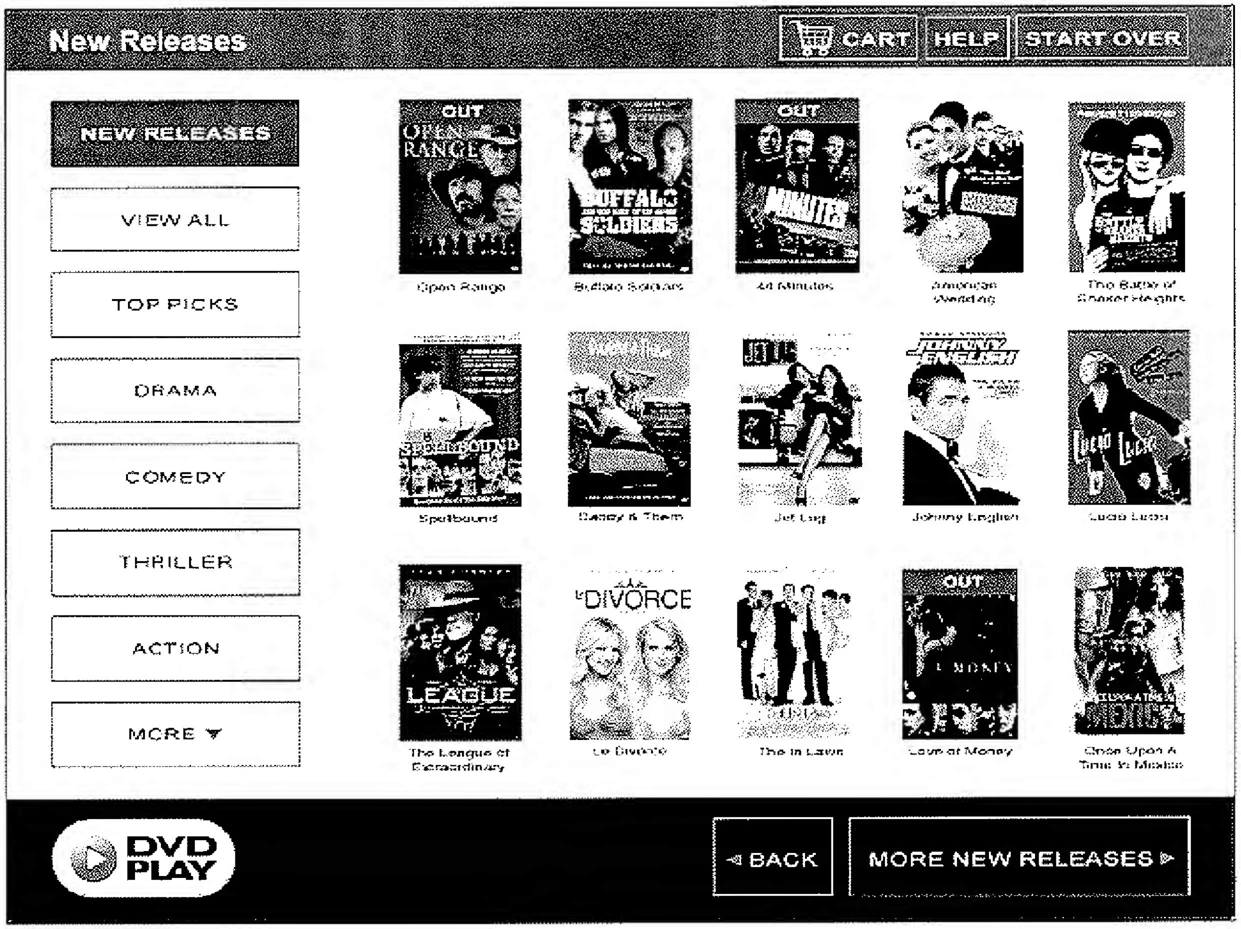
TO THE
§1.132 DECLARATION OF JENS HORSTMANN

U.S. Serial No. 09/903,444

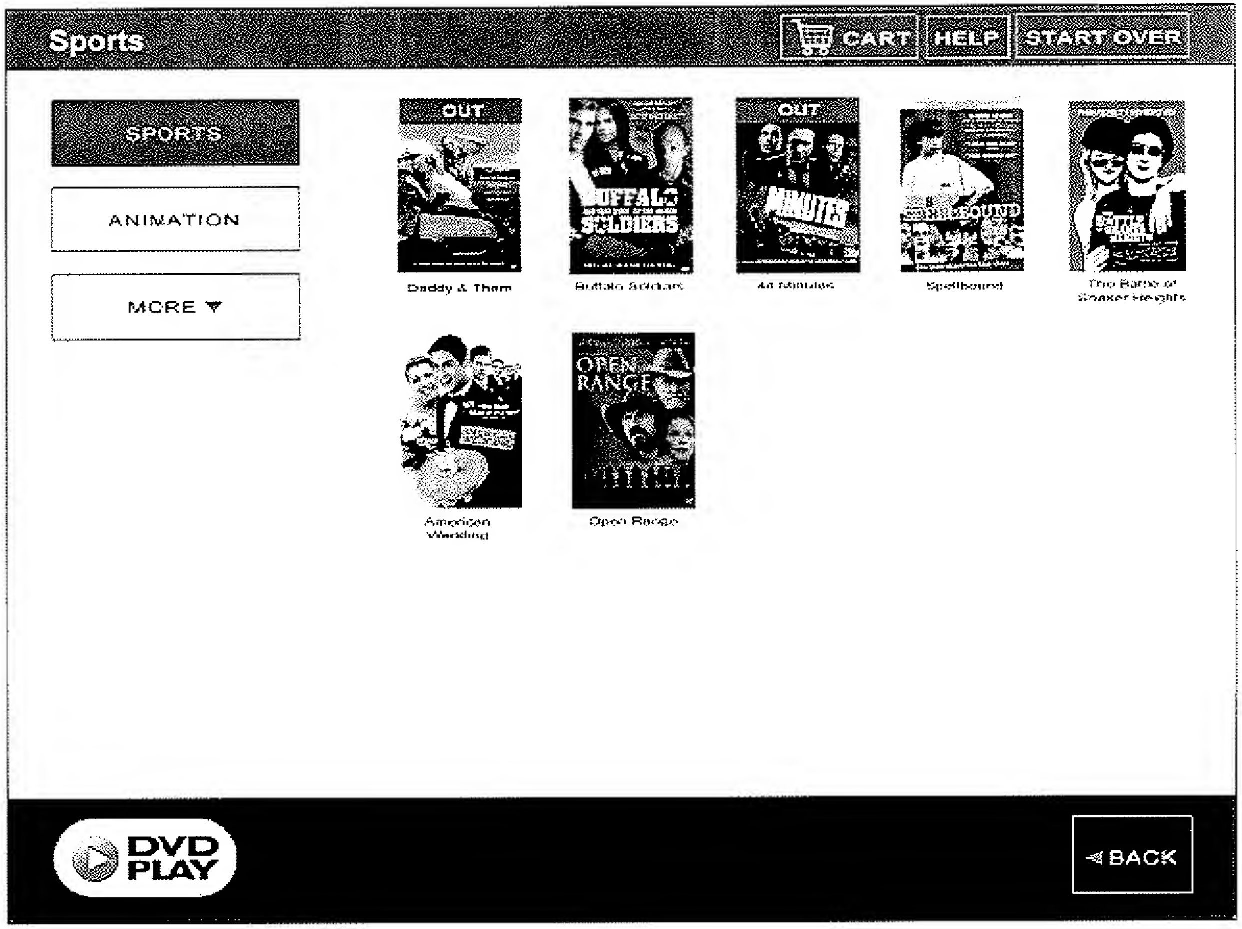
Start



New Releases/Categories – 1st Page



New Releases/Categories – 2st Page



DVD Movie Detail - Available

MOVIE DETAIL | CART | HELP | START OVER

THE ITALIAN JOB

CRIME / ACTION
111 minutes

Starring: **Mark Wahlberg, Charlize Theron, Edward Norton**
Director: **F. Gary Gray**
Rating: **PG13**
Subtitled in: **French**

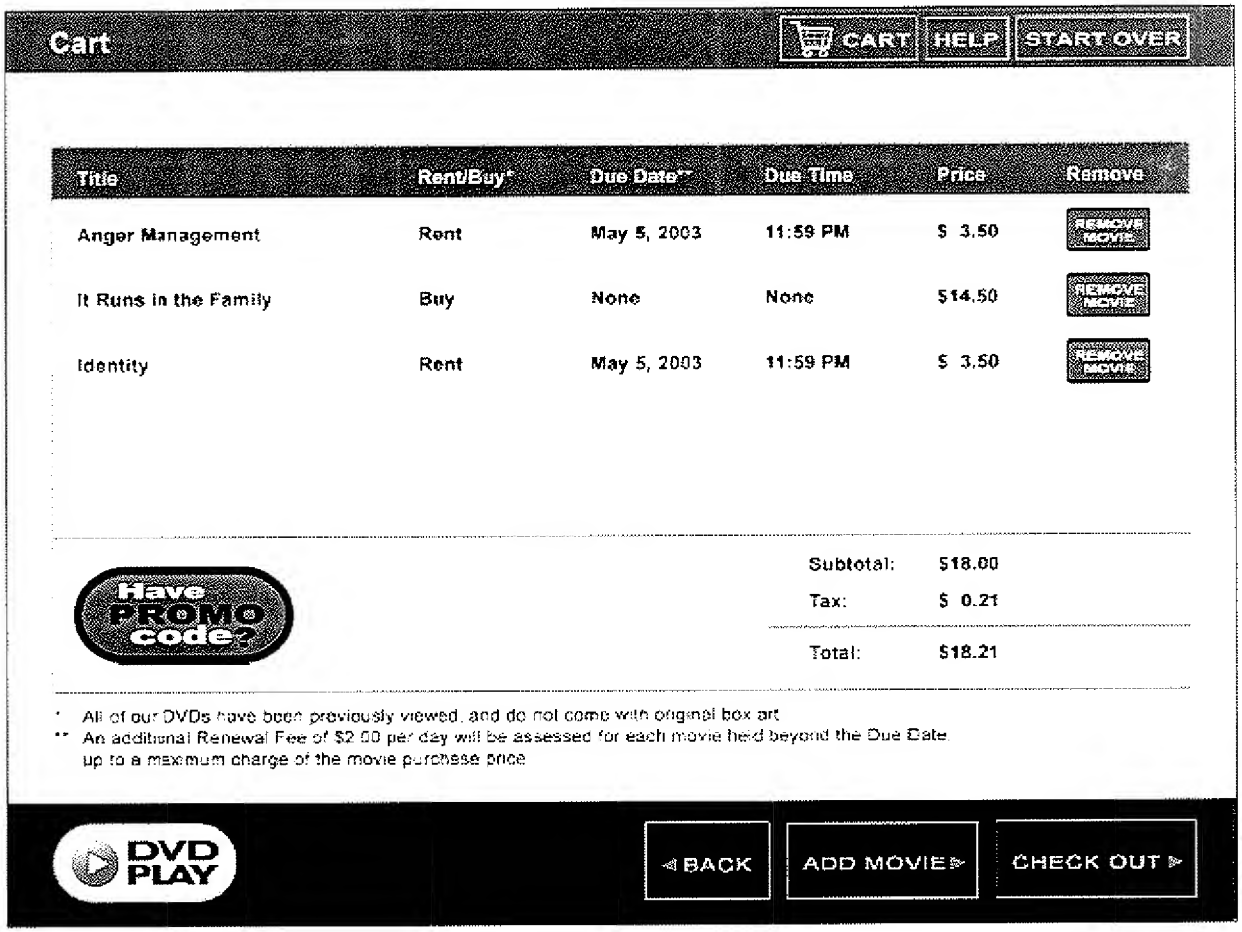
In this big-budget remake of the 1969 British caper classic, The Italian Job stars Mark Wahlberg as Charlie, the mastermind of a daring Venice heist overseen by John (Donald Sutherland), a lifelong criminal who plans to retire from the fold with the earnings from his most recent take. Basking in the glow of a job well done at a secluded retreat in the Alps, the thieves -- including the aptly-named Handsome Rob (Jason Statham), tech-geek Lyle (Seth Green), and hearing-impaired quipster Half Ear (Mos Def) -- are ruthlessly double-crossed by one of their own, the taciturn, calculating Steve (Edward Norton). Time passes and each member of the group finds himself pursuing other opportunities in the States, until Charlie rallies them together for a revenge-motivated scheme designed to bilk Steve of all his misbegotten earnings.

Rental Price:	$3.50
Purchase Price:	$15.00
Due Back By:	Friday, November 7, 2003 / 11:59 PM
Late Fee:	$3.50/1Day

DVD PLAY | ◄ BACK | BUY MOVIE ► | RENT MOVIE ►

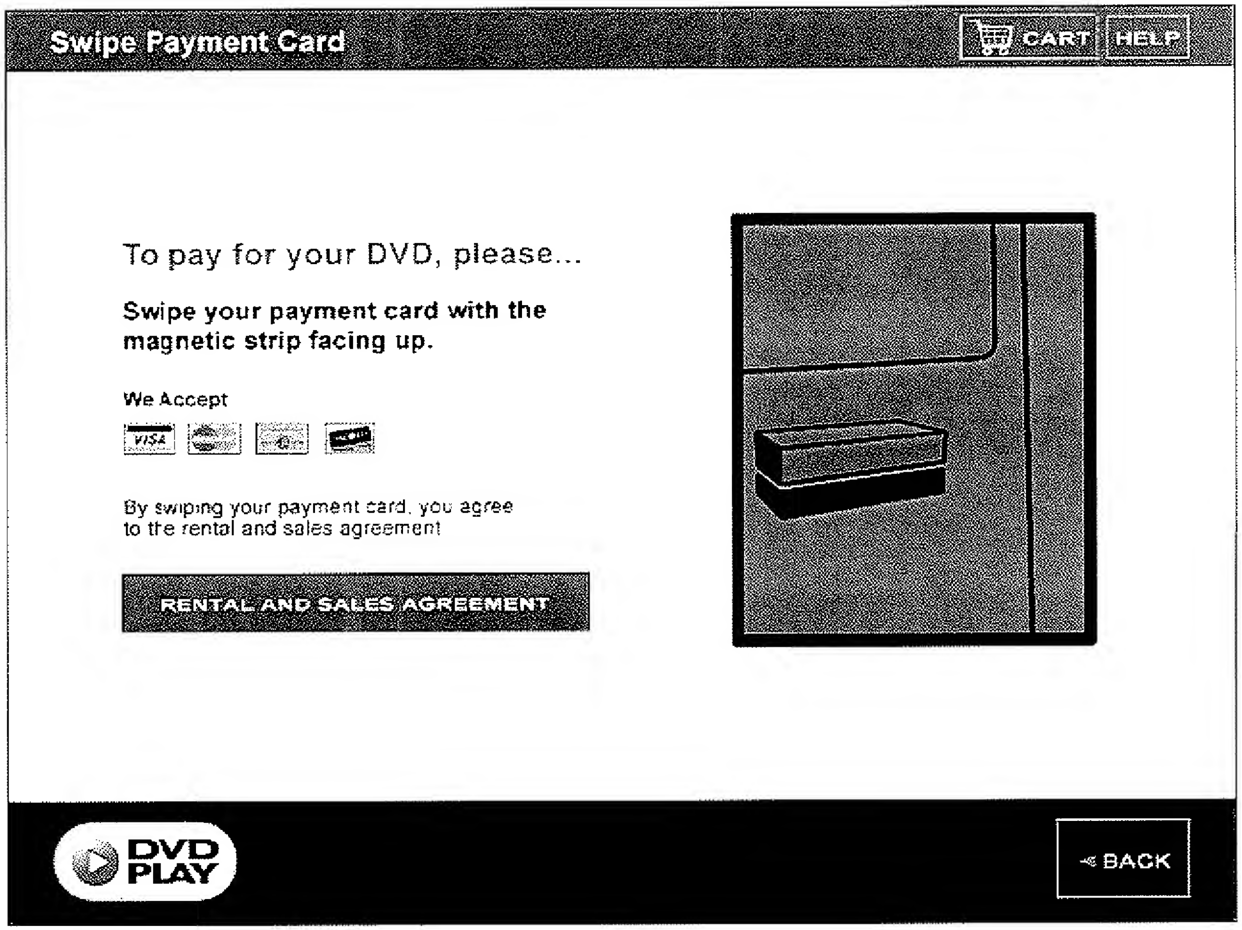
DVD PLAY www.dvdplay.net AUTOMATED ENTERTAINMENT MACHINE

Movie Cart Screen– No PromoCode

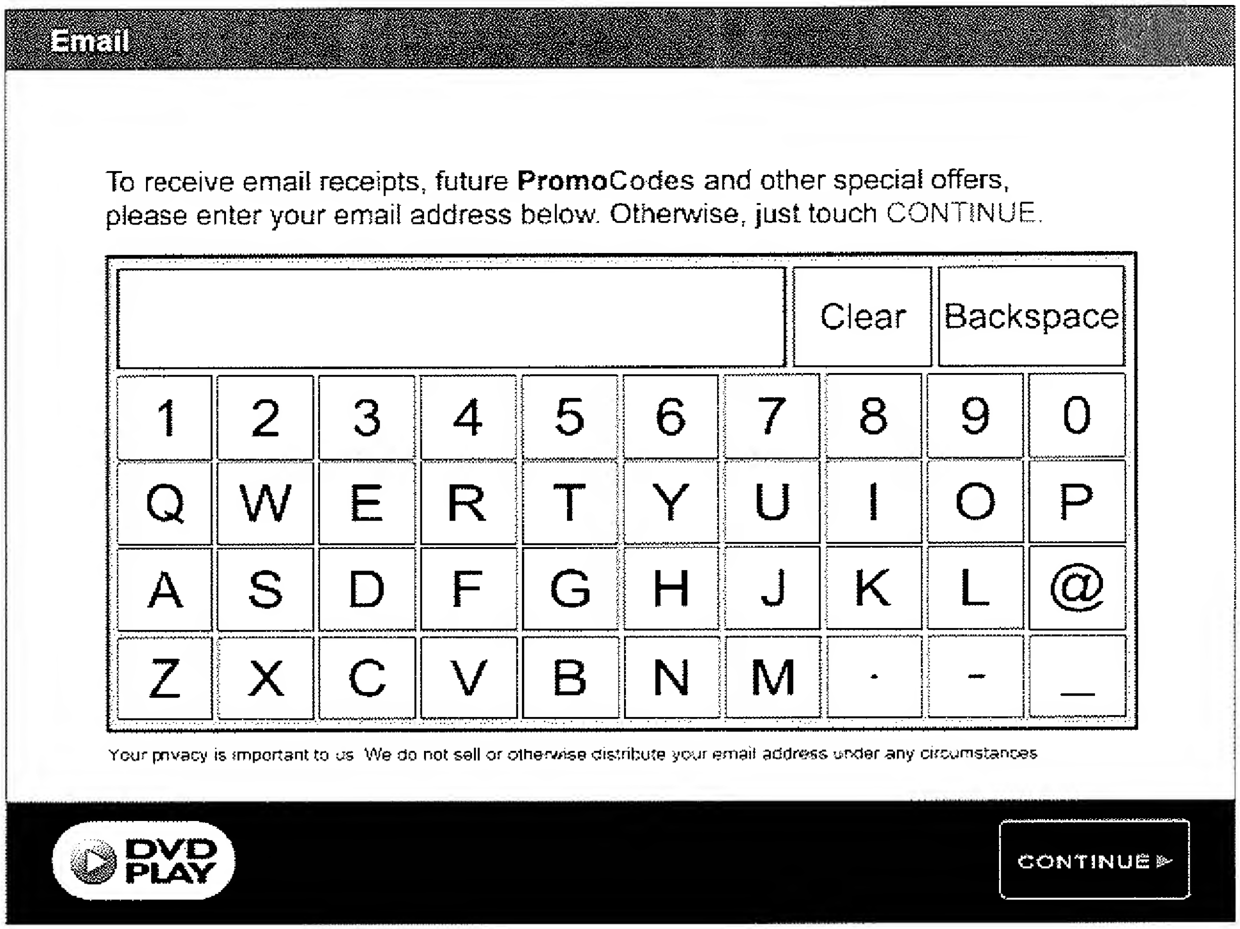


DVD PLAY www.dvdplay.net AUTOMATED ENTERTAINMENT MACHINE

Swipe Payment Card



Add Email


Email
To receive email receipts, future PromoCodes and other special offers, please enter your email address below. Otherwise, just touch CONTINUE.
Clear
Backspace
1 2 3 4 5 6 7 8 9 0
Q W E R T Y U I O P
A S D F G H J K L @
Z X C V B N M . - _
Your privacy is important to us. We do not sell or otherwise distribute your email address under any circumstances
DVD PLAY
CONTINUE

Delivering DVD

Delivering DVD

Delivering DVD.
One moment please...

Don't forget,

Anger Management is due back by Wednesday, Sept 7, 2003, 11:59 PM

DVD PLAY

DVD PLAY www.dvdplay.net AUTOMATED ENTERTAINMENT MACHINE

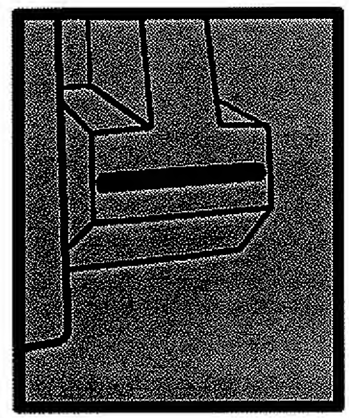
Remove Movie - Rent

Remove DVD

Here you go!

Please take special care of the DVD.

ENJOY!



DVD PLAY

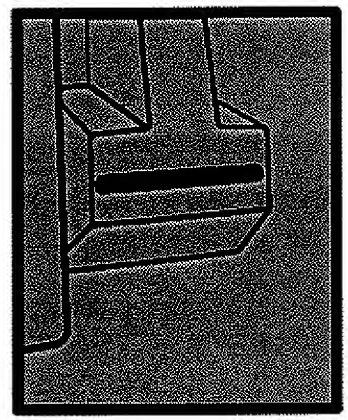
Return DVD

Return DVD

HELP START OVER

To return your DVD, please...

1. Make sure bar code on DVD is facing up
2. Insert case in direction of arrow
3. Insert to dotted line on case and let go



DVD PLAY

movies | locations | kiosk | spotlight | support | about | ho

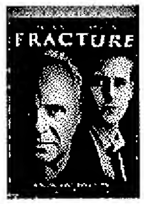
i'm your new video store

now playing in the DVDPlay kiosk

Now Playing
Coming Soon


Perfect Stranger

Wild Hogs



Fracture

Vacancy

The Lookout

Disturbia

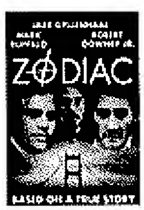
TMNT


Are We Done Yet?

I Think I Love My Wife


Unaccompanied Minors

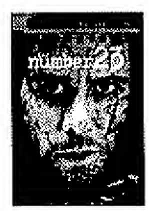

300



Zodiac


Hot Fuzz

Premonition



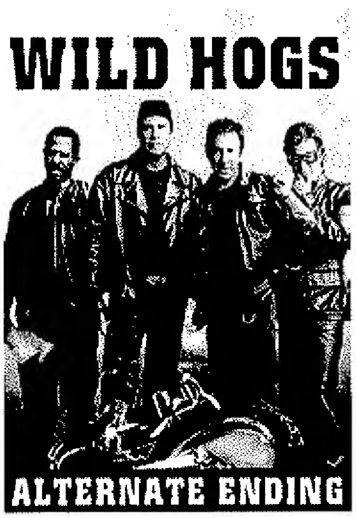
The Number 23

next

DVD PLAY i'm your new video store

Now Playing
Coming Soon

Wild Hogs



Tim Allen, John Travolta, Martin Lawrence and William H. Macy hit the road in this rollicking comedy-adventure about a group of middle-aged friends who decide to rev up their routine suburban lives with a freewheeling motorcycle trip. Taking a long dreamed-of breather from their stressful jobs and family responsibilities, they can't wait to feel the freedom of the open road.

Cast:	John Travolta, Martin Lawrence, Tim Allen
Director:	Walt Becker
Category:	Comedy
Running Time:	100 Min.
Subtitles:	English
DVD Release:	2007-08-14
MPAA Rating:	PG-13

rent it near you! ▶ more new releases ▶

DVD PLAY i'm your new video store

spot a kiosk

Tell us where you are, and we'll tell you where to find us. Just plug in your information below and we'll steer you to the kiosk nearest you.

Street:

City:

State / Province:

Postal Code: 22314

Country: United States

Radius (miles) 20

Find my kiosk ▶

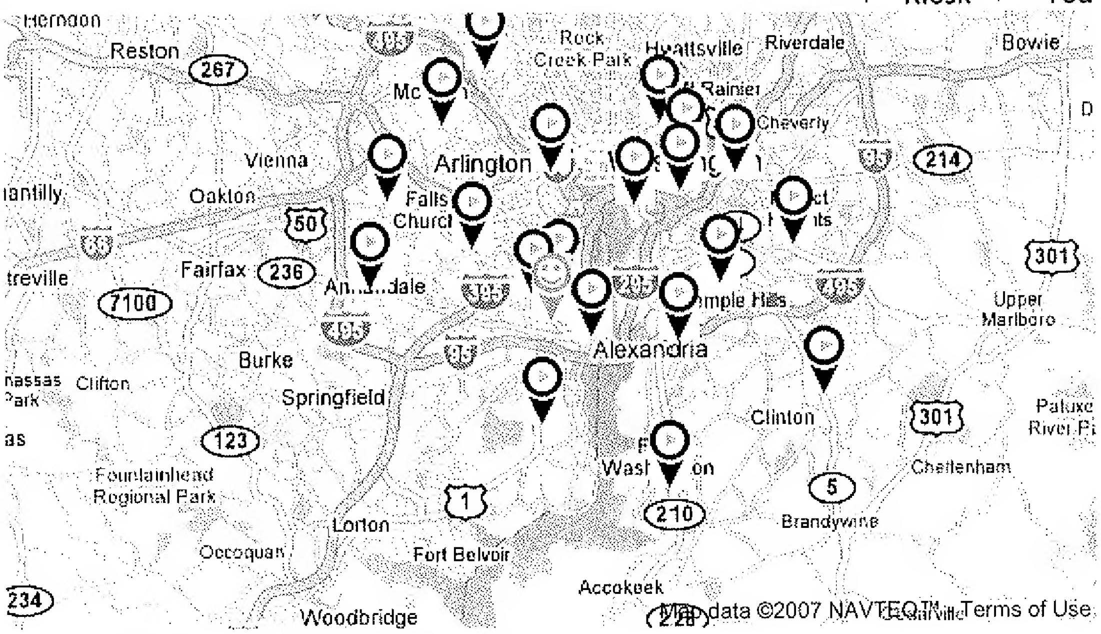
* Only the 20 closest kiosks will be shown even if more exist in the selected radius.

DVD PLAY

i'm your new video store

22314 us

=Kiosk =You



#	Distance	Store Location	
(1)	1.41 miles	**Safeway** 3526 King St Alexandria, VA 22302 us (703) 379-6019 5am-12pm	Map & Directions
(2)	1.59 miles	**Safeway** 8646 Richmond Hwy Alexandria, VA 22309 us (703) 780-3646 5am-12pm	Map & Directions
(3)	1.96 miles	**Safeway** 7900 Ft Hunt Alexandria, VA 22308 us (703) 765-0924 5am-12pm	Map & Directions
(4)	4.79 miles	**Safeway** 7451 MT. VERNON SQAURE CENTER Alexandria, VA 22306 us 703-340-1033 5:00 AM - 12:00 AM	Map & Directions

(5)	4.95 miles	**Safeway** 5821 Crossroads Ctr Way Falls Church, VA 22041 us (703) 533-3800 5am-12pm	Map & Directions
(6)	5.86 miles	**Safeway** 6235 Oxin Hill Rd Oxin Hill, MD 20745 us (301) 839-0718 Mon - Sat 5:00 AM - 12:00 AM	Map & Directions
(7)	6.51 miles	**Safeway** 401 M St SW Washington, DC 20024 (202) 554-9155 Mon - Sat 5:00 AM - 12:00 AM, Sun 5:00 AM - 10:00 PM	Map & Directions
(8)	6.87 miles	**Safeway** 1525 Wilson Blvd Arlington, VA 22209 us 703-276-9315 Mon - Sat 5:00 AM - 12:00 AM, Sun 5:00 AM - 10:00 PMSun 5:00 AM - 10:00 PMSun 5:00 AM - 10:00 PMSun 5:00 AM - 10:00 PMSun 5:00 AM - 10:00 PMSun 5:00 AM - 10:00 PMSun 5:00 AM - 10:00 PMSun 5:00 AM - 10:00 PMSun 5:00 AM - 10:00 PMSun 5:00 AM - 10:00 PMSun 5	Map & Directions
(9)	7.88 miles	**Safeway** 2346 Iverson St Temple Hills, MD 20748 (301) 423-6464 Mon - Sat 5:00 AM - 12:00 AM, Sun 5:00 AM - 10:00 PM	Map & Directions
(10)	8.37 miles	**Safeway** 415 14th St SE Washington, DC 20003 us	Map & Directions

		(202) 547-4333 5am-12pm	
(11)	8.58 miles	**Safeway** 7414 Little River Turnpike Annandale, VA 22003 us (703) 941-3874 Mon - Sat 5:00 AM - 12:00 AM	Map & Directions
(12)	9.32 miles	**Safeway** 990 E Swann Creek Rd Fort Washington, MD 20744 us (301) 965-6000 Mon - Sat 5:00 AM - 12:00 AM	Map & Directions
(13)	9.41 miles	**Safeway** 7397 Lee Hwy Falls Church, VA 22042 us (703) 573-2057 Mon - Sat 5:00 AM - 12:00 AM	Map & Directions
(14)	9.68 miles	**Safeway** 1601 Maryland Ave NE Washington, DC 20002 us (202) 398-6903 5am-12pm	Map & Directions
(15)	10.30 miles	**Safeway** 6244 Old Dominion Rd McLean, VA 22101 us (703) 538-6539 Mon - Sat 5:00 AM - 12:00 AM	Map & Directions
(16)	10.33 miles	**Safeway** 514 Rhode Island Ave, NE Washington, DC 20002 (202) 636-8640 Mon - Sat 5:00 AM - 12:00 AM, Sun 5:00 AM - 10:00 PM	Map & Directions
(17)	10.79 miles	**Safeway** 322 40th St NE Washington, DC 20019 (202) 397-2802 Mon - Sat 5:00 AM - 12:00 AM, Sun 5:00 AM - 10:00 PM	Map & Directions
(18)	11.66 miles	**Safeway** 5800 Silver Hill Rd District Heights, MD 20747	Map & Directions

		(301) 568-0330 Mon - Sat 5:00 AM - 12:00 AM, Sun 5:00 AM - 10:00 PM	
(19)	11.88 miles	**Safeway** 4701 Sangamore Rd Bethesda, MD 20816 us (301) 320-1770 Mon - Sat 5:00 AM - 12:00 AM	Map & Directions
(20)	12.90 miles	**Safeway** 8785 BRANCH AVENUE CLINTON, MD 20735 us 301-856-7850 5:00 AM - 12:00 AM	Map & Directions

EXHIBIT D

TO THE
§1.132 DECLARATION OF JENS HORSTMANN

U.S. Serial No. 09/903,444

From: REDACTED @dvdplay.com]
Sent: Wednesday, January 26, 2005 6:23 PM
To: J.Horstmann
Subject: FW: update
Importance: High

Sorry..missed you on the CC.

REDACTED

-----Original Message-----
From: REDACTED @dvdplay.net]
Sent: Wednesday, January 26, 2005 3:39 PM
To: REDACTED
Subject: FW: update
Importance: High

..it's here...!!!

Attached is the term sheet from GRP/USVP. Below are my first comments. I will dig into deeper on my way up to Seattle tonight.

REDACTED - CONFIDENTIAL

There is lots more in here, but I think these are the hot buttons. Let me know if you have questions.

REDACTED

-----Original Message-----
From: J.Horstmann [mailto:jhorstmann@DVDplay.net]
Sent: Wednesday, January 26, 2005 2:38 PM
To: REDACTED
Subject: FW: update

-----Original Message-----
From: REDACTED
Sent: Wednesday, January 26, 2005 2:31 PM
To: J.Horstmann
Subject: RE: update

Jens:

Please find attached a copy of the term sheet we and USVP delivered to REDACTED today. Our two firms are delighted jointly to deliver this executed term sheet, which provides for REDACTED to commit up to $30 million to help launch and support the growth of RedBox, as formed from the combined assets of McDonald's DVD vending business, DVDPlay and GetAMovie. As you know, all of us at both GRP and USVP are enthusiastic about the opportunity for this business and excited to work with REDACTED, yourself and the combined team to build a successful company. We look forward to discussing the attached at your earliest convenience.

Best regards,

REDACTED

-----Original Message-----
From: J.Horstmann [mailto:jhorstmann@DVDplay.net]
Sent: Wednesday, January 26, 2005 6:29 AM
To: REDACTED
Subject: RE: update

Thanks for the update, REDACTED Would be great if you could copy me on the term sheet as we are party to it and our Board can't wait to get an insight (we have not shared your preview version).

Thanks,

Jens

> -----Original Message-----
> From: REDACTED
> Sent: Tuesday, January 25, 2005 9:36 PM
> To: J.Horstmann
> Subject: RE: update
>
> Jens:
>
> As Brian communicated, we are very excited to have REDACTED as our
> partner. That same message has been communicated to REDACTED. As it
> happens, we haven't actually sent the term sheet over yet, but the
> delay isn't substantive. REDACTED wanted to have their lawyers review it
> quickly. My expectation is that REDACTED will jointly deliver a
> term sheet to REDACTED et al. tomorrow. We are similarly looking forward
> to working with you and everybody involved in making this a great
> success.
>
> Best regards,
>
> REDACTED
>
> ________________________________
>
> From: J.Horstmann [mailto:jhorstmann@DVDplay.net]
> Sent: Tue 1/25/2005 9:22 PM
> To: REDACTED
> Subject: RE: update
>
>
>
> Thanks, REDACTED! It's good to hear your confirmation .. we look forward
> to working with you and making this a great success!

From: REDACTED@mcd.com
Sent: Friday, January 28, 2005 4:45 PM
To: J.Horstmann
Cc: REDACTED
Subject: Re: your call

Jens,

I received your e-mail this morning expressing disappointment regarding the decision by Redbox not to place a purchase order for DVD machines.

REDACTED - CONFIDENTIAL

transaction with DVDPlay of the nature described in our non-binding Letter of Intent dated December 6, 2004 is highly improbable. In accordance with the non-binding nature of that Letter of Intent, and its provisions permitting either party to terminate discussions at any time with or without reason, McDonald's Corporation now considers the discussions contemplated by the Letter of Intent terminated.

REDACTED - CONFIDENTIAL

REDACTED - CONFIDENTIAL

As you are well aware, DVDPlay and McDonald's Corporation continue to be parties to the DVDPlay, Inc. Development, Supply, License and Services Agreement, dated March 2, 2004. That agreement places certain obligations on DVDPlay with regard to existing DVD rental machines in operation as well as exclusivity. We are confident that you are aware of these obligations and will continue to abide by the terms of that document.

REDACTED - CONFIDENTIAL

you will appreciate that the future business plans of Redbox are confidential and not an appropriate topic for discussion.

Sincerely,

REDACTED

"J.Horstmann"
<jhorstmann@DVDplay.net>

To: **REDACTED**

cc: **REDACTED**

Subject: your call

01/28/2005 12:41

AM

REDACTED - I was hoping you would call back this afternoon. We had a lot of static in our call and I'm not sure if I heard right.

I can't imagine that you were serious about what you said or I mistakenly heard. The condition of acceptance was clear: a P.O. hinged on software and other due diligence and field operations and acceptance of our machine - we went over this list numerous times. There was never a thought except for an emergency backup to suddenly switch to REDACTED given that we were and maybe still are planning to be one team nobody would pull something like this on his partner last minute. How do you expect us to build trust and accept your leadership this way? I'm sure that there was ample opportunity to tell us quite some time ago.

You can't think that our investors spent $1.8m and the same amount on the A100+ to be told 1 day before the order that there is no order? What about the endless due diligence .. and other time we've invested?

Again, I have the flu and must have gotten this all wrong. Please state in writing what your intensions are, my employees, investors, Board and REDACTED are waiting.

Thank you,

Jens

RedBox-DVDPlay UI Comparison

Below is a brief comparison of the DVDPlay and Redbox UI. It should be noted that in addition to nearly identical layout of each screen, the flow of the Redbox's Rental process appears to be completely identical to the DVDPlay rental flow. In its simplest format, the rental flow for both DVDPlay and Redbox is as follows:

1. Start Screen
↓
2. Select Movie Screen
↓
3. Movie Detail Screen
↓
4. Cart Screen
↓
5. Swipe Card Screen
↓
6. Zip Code Screen
↓
7. Email Screen

Below is a screen-by-screen comparison of attributes (buttons, text, layout) of the DVDPlay and Redbox UI screens. Items that are identical or very similar are shaded in gray. Numbered copies of each screen are attached in the zip file. Please note that the color cannot easily be compared since the DVDPlay screens are raw graphics files whereas the Redbox screens are images taken from a digital photo.

Please note, we do not have screen shots of some screens currently such as return flow, PromoCode, Help Screens, etc.

1. Start Screen

DVDPlay	Redbox
Select Movie Button	Select DVD Button
Return Movie Button	Return DVD Button
Help Button	Help Button
PromoCode Button	n/a

2. Select Movie Screen

DVDPlay	Redbox
Category Selection Buttons (New Releases, Action, Comedy, etc)	All New Releases (no category selection)
Help Button	Help Button
15 clickable Movie Box Arts with text title underneath	18 clickable Movie Box Arts with title underneath
Start Over Button	Start Over Button
Cart Button	View Cart Button
More New Releases Button (red arrow)	More Button (red arrow)

3. Movie Details Screen

DVDPlay	Redbox
Box Art of left of page	Box Art of left of page
Title on right of page	Title below box art
Starring	Starring
Directed by	Director
Rating	Rating
Description	Description
Rental Price	Rental Fee
Due Back By (date & time)	Due Day/Due Time
Extra Day Fee	n/a
Help Button	Help Button
Start Over Button	Start Over Button
Cart Button	View Cart Button
Back Button (red arrow)	Back Button (red arrow)
Rent Movie Button (red arrow)	Rent Button
Buy Movie Button	n/a

4. Cart Screen

DVDPlay	Redbox
Title Column Header	Title Column Header
Rent/Buy Column Header	Rent/Buy Column Header
Due Date Column Header	Due Date Column Header
Due Time Column Header	Due Time Column Header
Price Column Header	Price Column Header
Remove Column Header	Remove Column Header
Remove Title Red Button	Remove Red Button
Subtotal	Subtotal
Tax	Tax
Total	Total
Help Button	Help Button
Start Over Button	Start Over Button
Back Button	n/a

PromoCode Button	Promo Code Button
Add Movie Button	Add Another Movie Button
Checkout Button	Checkout Button

5. Swipe Card Screen

DVDPlay	Redbox
Image of Credit Card Reader – animated	Image of Credit Card Reader – animated?
Credit Card graphics	Credit Card Graphics
Rental & Sales Agreement	n/a
Back Button	n/a
Start Over Button	Start Over Button

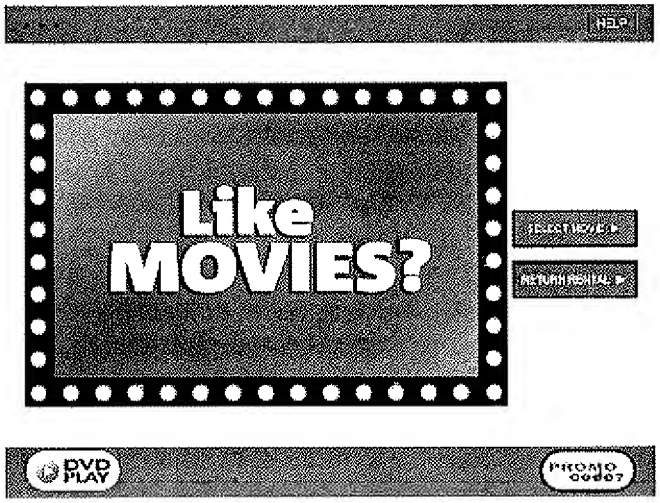
6. Enter Zip Code Screen

DVDPlay	Redbox
Text – Please enter your zip code	Text – Enter zip code
Keyboard	Keyboard (layout different)
Enter Button	Enter Button
Continue Button	n/a
n/a	No Thanks Button

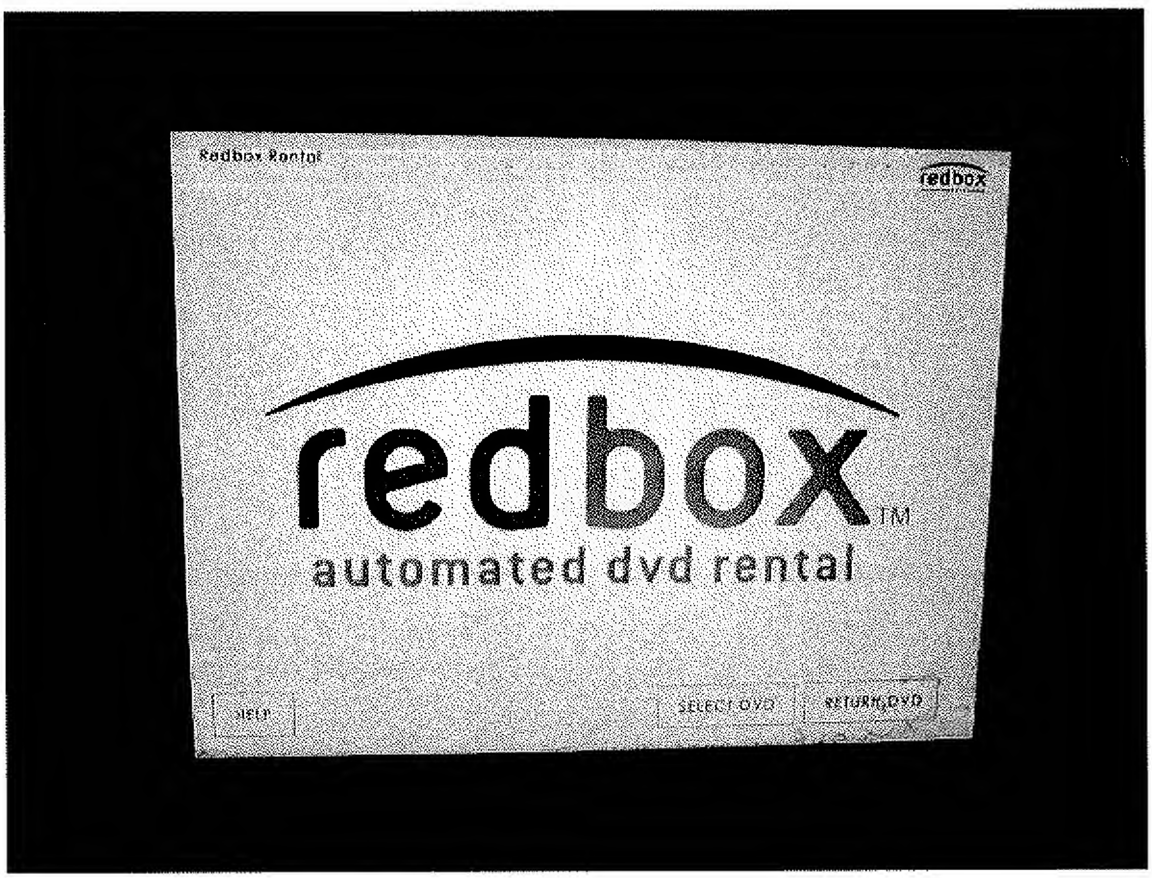
7. Enter Email Screen

DVDPlay	Redbox
Text – Please enter your email address	Text – Please enter your email address
Keyboard	Keyboard (layout similar but not identical)
Enter Button	Enter Button
Continue Button	n/a
n/a	No Thanks Button

DVDPlay Systems / Redbox (Selectron) Screen Comparison

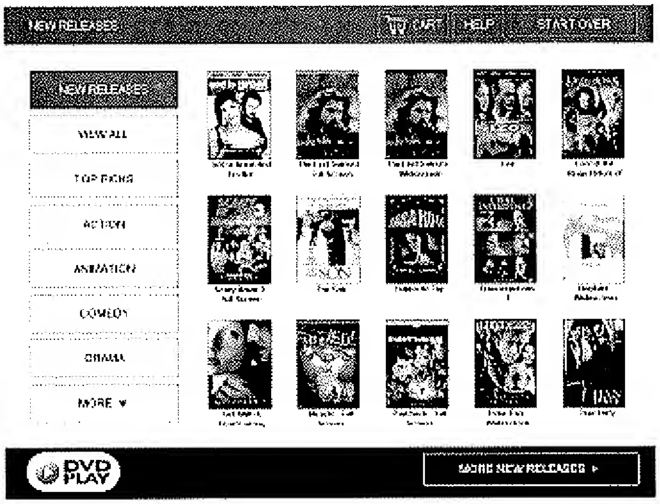


DVDPlay Systems Start Screen

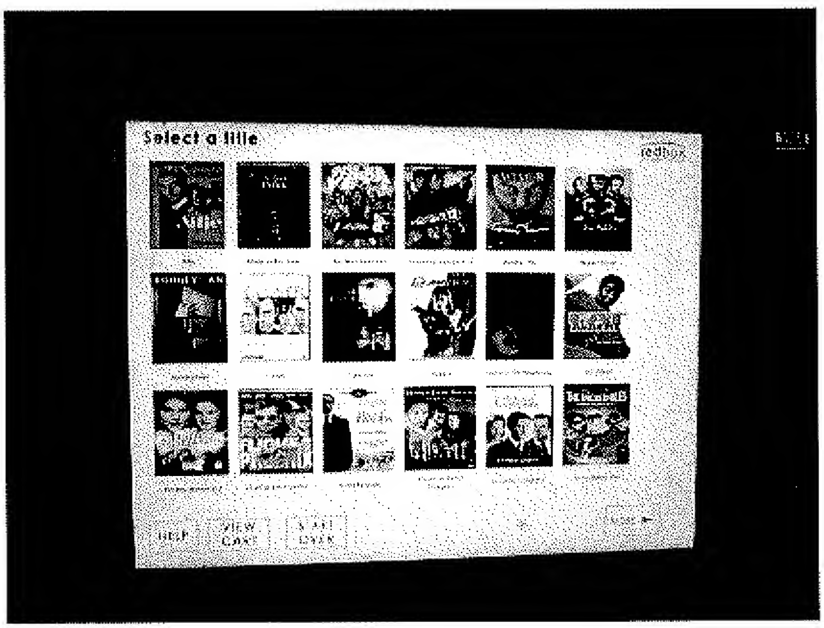


Redbox (Solectron) Start Screen

DVDPlay Systems / Redbox (Selectron) Screen Comparison

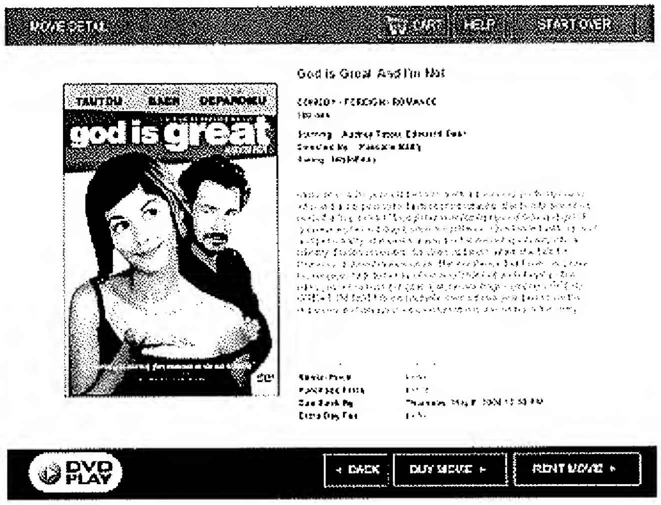


DVDPlay Systems Select Movie Screen

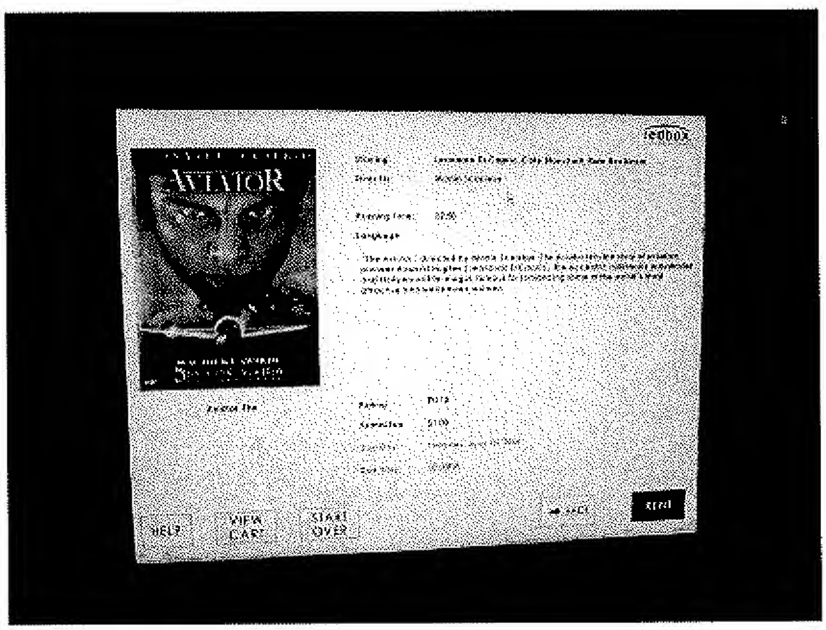


Redbox (Solectron) Select Movie Screen

DVDPlay Systems / Redbox (Selectron) Screen Comparison



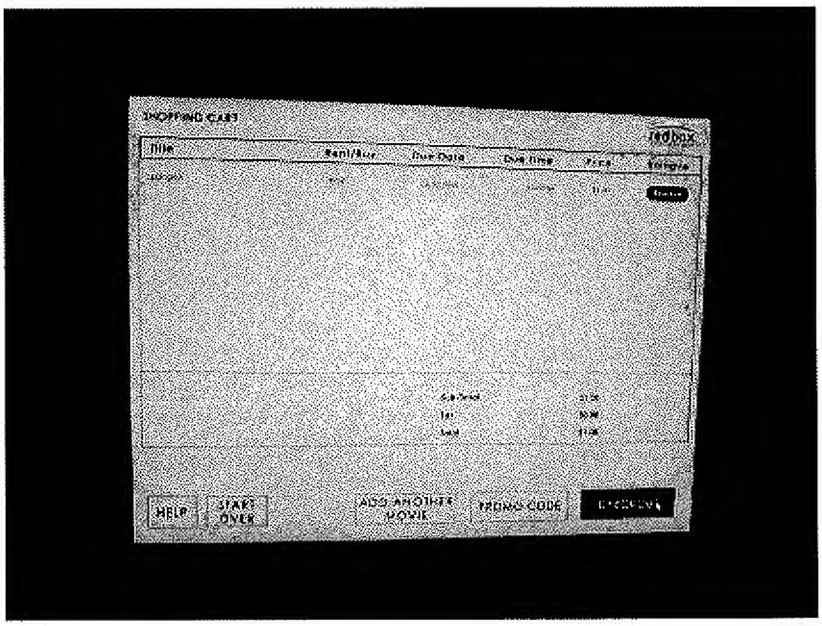
DVDPlay Systems Detail Screen



Redbox (Solectron) Detail Screen

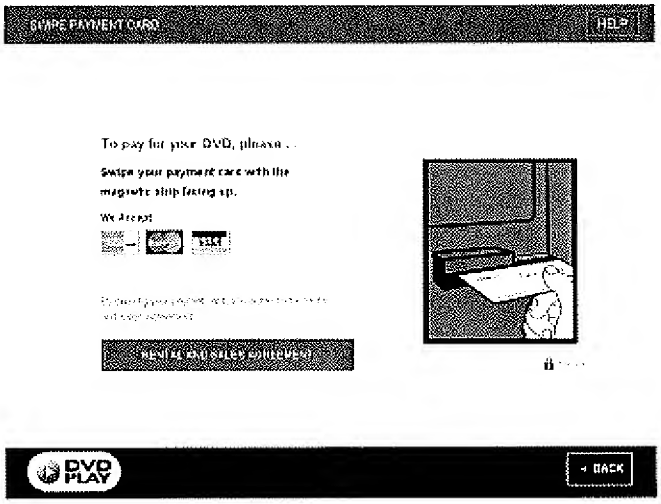
DVDPlay Systems / Redbox (Selectron) Screen Comparison

DVDPlay Systems Cart Screen

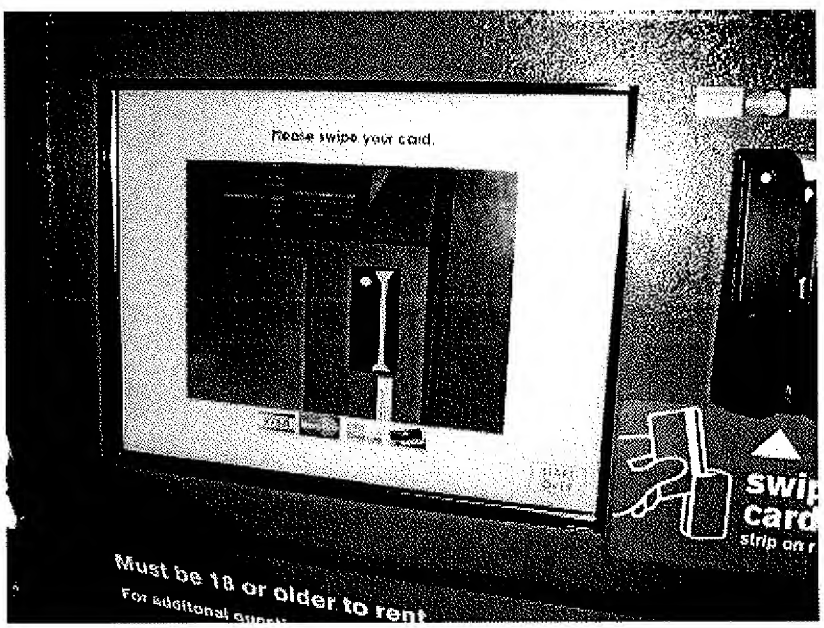


Redbox (Solectron) Cart Screen

DVDPlay Systems / Redbox (Selectron) Screen Comparison

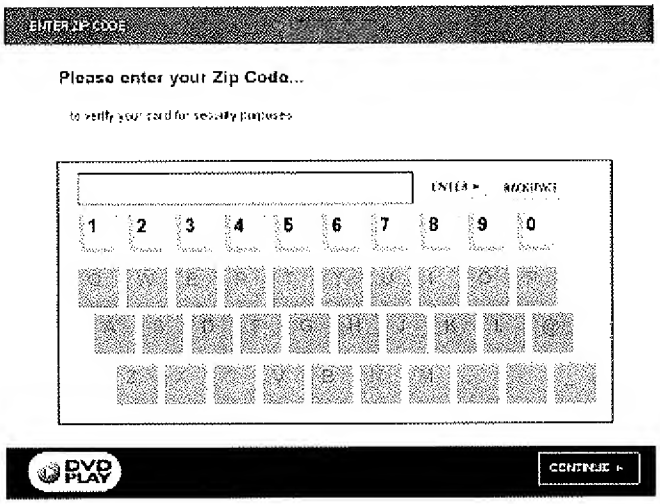


DVDPlay Systems Swipe Card Screen

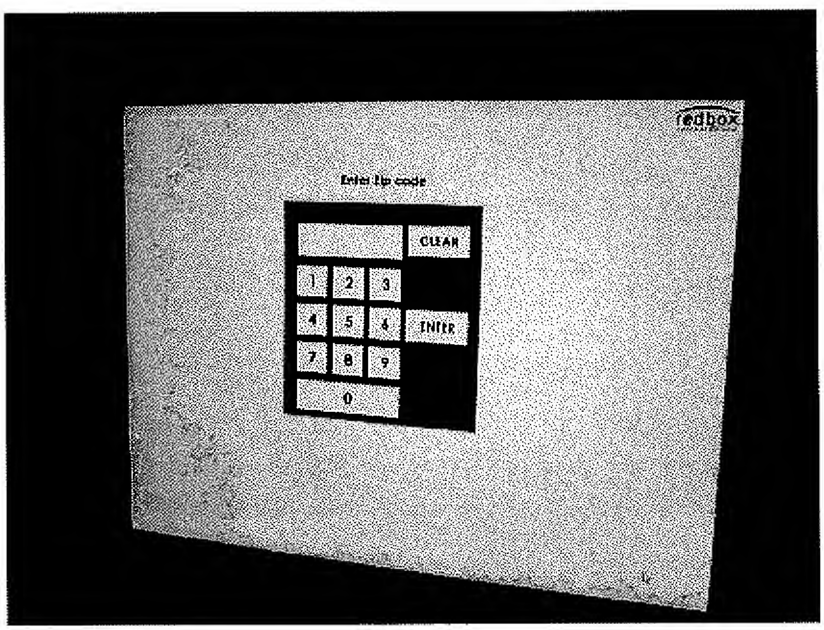


Redbox (Solectron) Swipe Card Screen

DVDPlay Systems / Redbox (Selectron) Screen Comparison

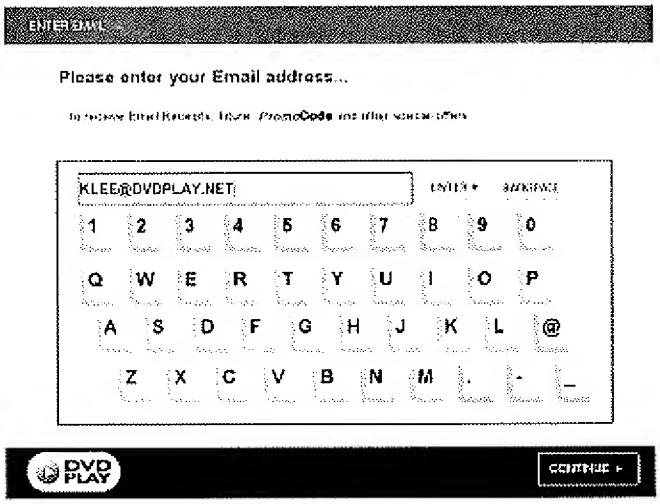


DVDPlay Systems Enter Zip Code Screen

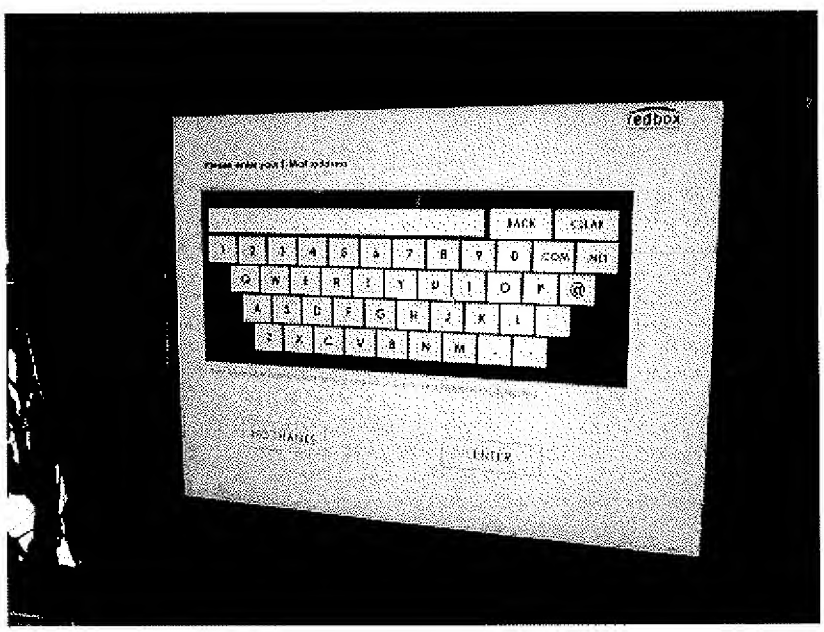


Redbox (Solectron) Enter Zip Code Screen

DVDPlay Systems / Redbox (Selectron) Screen Comparison



DVDPlay Systems Enter Email Screen



Redbox (Solectron) Enter Email Screen

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported): November 17, 2005

COINSTAR, INC.
(Exact name of registrant as specified in its charter)

Delaware	**000-22555**	**94-3156448**
(State or other jurisdiction of incorporation)	(Commission File No.)	(I.R.S. Employer Identification No.)

1800 – 114 th Avenue SE
BELLEVUE, WA 98004
(Address of principal executive offices and zip code)

Registrant's telephone number, including area code: (425) 943-8000

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communication pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01 Entry into a Material Definitive Agreement.

On November 17, 2005, Coinstar, Inc. (the "Company") entered into a LLC Interest Purchase Agreement (the "Agreement") by and among Redbox Automated Retail, LLC ("Redbox"), McDonald's Ventures, LLC and the Company.

In accordance with the Agreement, the Company will invest at closing $20 million in cash in Redbox in exchange for a 47.30% ownership interest in Redbox. If Redbox attains certain performance goals in the first year, the Company will invest an additional $12 million in Redbox, which will not affect the Company's ownership interest in Redbox. For one year following the two-year anniversary of closing the transaction, the Company, in its sole discretion, has the option to acquire a majority interest in Redbox.

Closing of the transaction is expected in the next thirty days and is subject to certain customary closing conditions.

The foregoing description of the Agreement does not purport to be complete and is qualified in its entirety by the terms and conditions of the Agreement. A copy of the Agreement is attached hereto as an exhibit and is incorporated herein by reference.

Item 8.01 Other Events.

The Company issued a press release on November 17, 2005. The full text of the press release is attached as Exhibit 99.1 to this Current Report on Form 8-K.

Item 9.01 Financial Statement and Exhibits.

(d) **Exhibits**

Exhibit No.	Description
2.1	LLC Interest Purchase Agreement dated November 17, 2005 by and among Redbox Automated Retail, LLC, McDonald's Ventures, LLC and Coinstar, Inc.*
99.1	Press Release issued by Coinstar dated November 17, 2005

* Certain exhibits and schedules in connection with the LLC Interest Purchase Agreement have been omitted pursuant to Item 601(b)(2) of Regulation S-K. Coinstar agrees to provide the Commission a copy of any such exhibit or schedule upon request.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

COINSTAR, INC.

Date: November 17, 2005

By: /s/ David W. Cole
David W. Cole
Chief Executive Officer

Exhibit 2.1

LLC INTEREST PURCHASE AGREEMENT

Dated as of November 17, 2005

by and among

REDBOX AUTOMATED RETAIL, LLC,

MCDONALD'S VENTURES, LLC

and

COINSTAR, INC.

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LLC INTEREST PURCHASE AGREEMENT

THIS LLC INTEREST PURCHASE AGREEMENT (this " Agreement "), dated as of November 17, 2005, is by and among Redbox Automated Retail, LLC, a Delaware limited liability company (" Redbox "), McDonald's Ventures, LLC, a Delaware limited liability company (" Ventures "), and Coinstar, Inc., a Delaware corporation (" Coinstar "). Each of the foregoing parties is referred to herein individually as a " Party " and together as the " Parties ."

WITNESSETH:

WHEREAS, Redbox owns certain assets relating to and operates an automated DVD-vending business (the " Redbox Business ");

WHEREAS, Coinstar desires to purchase Class A membership interests (" Class A Interests ") in Redbox having the rights and obligations to be set forth in the Second Amended and Restated Limited Liability Company Agreement of Redbox, dated as of the Closing Date and substantially in the form attached hereto as **Exhibit A** (the " Redbox LLC Agreement "), all on the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, Redbox, Ventures and Coinstar desire to make certain representations, warranties, covenants and agreements in connection with the transactions contemplated herein.

NOW, THEREFORE, in consideration of the premises and the mutual representations, warranties, covenants and agreements contained herein, the Parties agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. Definitions . As used in this Agreement, the following terms shall have the meanings set forth below:

" $37,500 Loss Claim " has the meaning set forth in Section 7.03(h).

" Affiliate " has the meaning set forth in Rule 12b-2 under the Exchange Act as in effect on the date hereof; provided , however , that notwithstanding the foregoing, Redbox shall not be considered an Affiliate of either Ventures or Coinstar, and Ventures or Coinstar, as the case may be, shall not be considered an Affiliate of Redbox.

" Agreement " has the meaning set forth in the preamble.

" Assumed Obligations " has the meaning set forth in Section 3.23(e).

" Authorizations " means (i) any and all certificates, permits, licenses, franchises, concessions, grants, consents, exemptions, approvals, orders, registrations, authorizations,

waivers or other approvals, variances or clearances from, or filings or registrations with, third parties (including Governmental Entities) and (ii) any and all waiting periods imposed by applicable Law.

" Benefit Plan " means any employment, consulting, personal service, retirement, pension, profit sharing, deferred compensation, stock bonus, savings, bonus, incentive, cafeteria, medical, dental, vision, hospitalization, life insurance, accidental death and dismemberment, medical expense reimbursement, dependent care assistance, tuition reimbursement, disability, sick pay, holiday, vacation, retention, termination, severance, change of control, stock purchase, stock option, restricted stock, phantom stock, stock appreciation rights, fringe benefit or other employee compensation or benefit plan, fund, policy, program, contract, agreement, arrangement, commitment or payroll practice of any kind (including any "employee benefit plan" as defined in Section 3(3) of ERISA).

" Business Day " means any day, other than a Saturday, Sunday or a day on which banking institutions in the City of Chicago are authorized or obligated by Law to close.

" Claim " has the meaning set forth in Section 7.03(c).

" Class A Interests " has the meaning set forth in the recitals.

" Closing " has the meaning set forth in Section 2.02(a).

" Closing Date " has the meaning set forth in Section 2.02(a).

" Closing Option Payment " has the meaning set forth in Section 6.06(a).

" Code " means the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder, as in effect from time to time

" Coinstar " has the meaning set forth in the preamble.

" Coinstar Agency Agreement " means the agency agreement by and between Redbox and Coinstar, dated as of the Closing Date, authorizing Coinstar to act, among other things, as the exclusive marketing agent for Redbox at certain grocery chains, drug stores, mass merchants and warehouse clubs inside the United States, substantially in the form attached hereto as **Exhibit B** .

" Coinstar Option " has the meaning set forth in Section 6.07(a).

" Conditional Cash Consideration " has the meaning set forth in Section 2.01(b).

" Contributed Assets " has the meaning set forth in Section 3.23(a).

" Contributed Machines " has the meaning set forth in Section 3.22.

" Contribution Agreements " means the Contribution and Assumption Agreement, dated as of January 1, 2005, by and among Ventures, McDonald's Corporation and Redbox (the " First Contribution Agreement "), the Second Contribution and Assumption Agreement, dated as of July 1, 2005, by and among Ventures, McDonald's Corporation and Redbox (the " Second Contribution Agreement "), and the Contribution and Assumption Agreement, dated as of July 31, 2005, between GAM and Redbox (the " GAM Contribution Agreement ").

" Derivative Securities " of any Person means any subscription, purchase, exchange or conversion rights, any options, warrants or other agreements, securities, contracts or commitments of any kind obligating that Person to issue, grant, deliver or sell, or cause to be issued, granted, delivered or sold, any Equity Securities of that Person.

" DVD Kiosks " means any DVD dispensing kiosk used in the conduct of the Redbox Business to dispense and handle returns of DVDs and to process customer billing, including the DVD machine, merchandising structure, accessories and other related tangible and intangible property.

" DVDPlay " has the meaning set forth in Section 3.09(c).

" DVDPlay Patent " has the meaning set forth in Section 3.09(d).

" DVDXpress " has the meaning set forth in Section 5.09.

" DVDXpress Credit Agreement " has the meaning set forth in Section 5.09.

"DVDXpress Offer Terms" has the meaning set forth in Section 6.06(b)(ii).

" DVDXpress Option " has the meaning set forth in Section 5.09.

" DVDXpress Transferred Rights " has the meaning set forth in Section 6.06(b)(i).

" DVDXpress Rights " has the meaning set forth in Section 6.06(a).

" Environmental Laws " means any applicable federal, state, local or other law, statute, rule, ordinance or regulation or any common law as in effect as of the date hereof pertaining to protection of human health from exposure to pollutants or contaminants or to protection or remediation of the environment, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. § 6901 et seq.; the Federal Clean Air Act, 42 U.S.C. § 7401-7626; the Federal Water Pollution Control Act and Federal Clean Water Act of 1977, as amended, 33 U.S.C. § 1251 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 135 et seq., as amended by the Federal Environmental Pesticide Control Act; the Federal Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Federal Safe Drinking Water Act, 42 U.S.C. § 300(f) et seq.; the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11001 et seq.; and the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq.

" Equity Securities " of any Person means any and all common stock, preferred stock and any other class of capital stock of, and any partnership or limited liability company interests in, such Person or any other similar interests of any Person that is not a corporation, partnership or limited liability company.

" ERISA " means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder, as in effect from time to time.

" Exchange Act " means the U.S. Securities Exchange Act of 1934, as amended from time to time, and the rules and regulations promulgated thereunder, as in effect from time to time.

" First Contribution Agreement " has the meaning set forth in the definition of Contribution Agreements set forth above.

" GAAP " has the meaning set forth in Section 3.06(a).

" GAM " means GetAMovie, Inc., an Illinois corporation.

" GAM Contribution Agreement " has the meaning set forth in the definition of Contribution Agreements set forth above.

" GARB " means GARB, LLC, a Delaware limited liability company.

" Governmental Entity " means any government or political subdivision or department thereof, any governmental or regulatory body, commission, board, bureau, agency or instrumentality, or any court or arbitrator or alternative dispute resolution body, in each case whether federal, state, local or foreign.

" Indemnified Coinstar Parties " has the meaning set forth in Section 7.03(a).

" Indemnified Redbox Parties " has the meaning set forth in Section 7.03(b).

" Initial Cash Consideration " has the meaning set forth in Section 2.01(b).

" Intellectual Property " means (a) the following intellectual property and proprietary rights worldwide: (i) trademarks, domain names, domain name registrations, service marks and trade names, together with all goodwill associated therewith (collectively, " Trademarks "); (ii) patents and patent applications and all associated inventions, and any and all divisions, continuations, continuations-in-part, reissues, continuing patent applications, reexaminations, and extensions thereof, any counterparts, utility models, certificates of invention, certificates of registration and like rights (collectively, " Patents "); (iii) writings and other works of authorship, if copyrightable; and (iv) trade secrets and other confidential business information and rights to limit the use or disclosure thereof by any Person; and (b) for purposes of this definition, the following technology: software (including data files, source code, object code, application programming interfaces, databases and other software-related specifications

and documentation), inventions, discoveries, improvements, specifications, embodiments, algorithms, formulae, processes, designs, schematics, drawings, technical information, data, ideas, know-how, show-how and the like.

" Interests " has the meaning set forth in Section 2.01(a).

" IRS " means the United States Internal Revenue Service.

" Knowledge of Redbox " means, with respect to any matter in question, the actual knowledge, after reasonable inquiry, of Chris Catalano, Gregg Kaplan, Brian Rady, Ryan Miller, Franz Kuehnrich and Mitch Lowe.

" Law " means any law, treaty, statute, common law, ordinance, code, rule, regulation, judgment, decree, order, writ, award, injunction or determination of any Governmental Entity.

" Liability " or " Liabilities " means, with respect to any Person, all debts, claims, liabilities, obligations, interests, damages and expenses of every kind and nature, whether known or unknown, liquidated or unliquidated, direct or indirect, absolute, accrued, contingent or otherwise, regardless of when such debt, claim, liability, obligation, interest, damage or expense arose or might arise, any obligations with respect to dividends or other distributions in respect of capital stock, stock appreciation rights, under the Consolidated Omnibus Budget Reconciliation Act of 1985, Section 4980B of the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder, as in effect from time to time, or Part 6 of Subtitle B of Title I of ERISA, as amended from time to time, and the rules and regulations promulgated thereunder, as in effect from time to time.

" Lien " means any mortgage, pledge, lien, security interest, claim, voting agreement (including any conditional sale agreement, title retention agreement, restriction or option having substantially the same economic effect as the foregoing) or encumbrance of any kind, character or description whatsoever.

" Losses " has the meaning set forth in Section 7.03(a).

" Material Adverse Effect " means, with respect to any Person, any change, circumstance or effect that, individually or in the aggregate with all other changes, circumstances and effects, is or would reasonably expected to be, materially adverse to (i) the business, assets, properties, condition (financial or otherwise) or results of operations of such Person and its subsidiaries taken as a whole or (ii) if such Person is a Party, the ability of such Party or any of its subsidiaries to consummate the transactions contemplated by, and to perform its obligations under, this Agreement.

" Material Contracts " has the meaning set forth in Section 3.12.

" McDonald's System " has the meaning set forth in Section 6.05(a).

" McDonald's USA " means McDonald's USA, LLC, a Delaware limited liability company.

" Option Period " has the meaning set forth in Section 6.07(a).

" Organic Change " means, with respect to Redbox, the occurrence of any of the following events: (i) any "person" or "group" (as such terms are used in Section 13(d)(3) of the Exchange Act) becomes the beneficial owner, directly or indirectly, of more than fifty percent (50%) of the total voting power of the voting securities of Redbox, whether as a result of issuance of securities, any merger, consolidation, recapitalization, tender offer or exchange offer, reclassification, liquidation or dissolution of Redbox or otherwise; (ii) during any period of two (2) consecutive years, individuals who at the beginning of such period constituted a majority of the board of managers or any similar governing body (together with any new managers or members of any similar governing body whose election by the board of managers or any similar governing body or whose nomination for election by the holders of membership interests or other holders of Equity Securities was approved by a vote of a majority of the members of the board of managers or members of any similar governing body then still in office (A) who were either managers at the beginning of such period or (B) whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the board of managers or such similar governing body then in office; (iii) the merger or consolidation of Redbox with or into another Person, or the sale of all or substantially all the assets of Redbox to another Person, and, in the case of any such merger or consolidation, the voting securities of Redbox that are outstanding immediately prior to such transaction and which represent one hundred percent (100%) of the aggregate voting power of the voting securities of Redbox are changed into or exchanged for cash, securities or property, unless pursuant to such transaction such securities are changed into or exchanged for, in addition to any other consideration, securities of the surviving Person or transferee that represent immediately after such transaction at least a majority of the aggregate voting power of the voting securities of the surviving Person or transferee or a Person controlling such surviving Person or transferee; (iv) the commencement of a voluntary case under any chapter of the federal bankruptcy code, or the consent to the commencement of an involuntary case against it under the federal bankruptcy code, or the failure to cause such case to be dismissed within sixty (60) days; or (v) the institution of proceedings for liquidation, rehabilitation, readjustment, moratorium or composition (or for any related or similar purpose) under any Law (other than the federal bankruptcy code) relating to financially distressed debtors, their creditors or their property, or the consent to the institution of any such proceedings against it, or the failure to cause such proceedings to be dismissed within sixty (60) days.

" Party " or " Parties " has the meaning set forth in the preamble.

" Patents " has the meaning set forth in the definition of "Intellectual Property" set forth above.

" Permitted Liens " means (i) statutory liens for current Taxes, assessments or other governmental charges not yet delinquent or the amount or validity of which is being contested in good faith by appropriate Proceedings, provided that an appropriate reserve is established therefor, (ii) mechanics', materialmen's, carriers' and other similar Liens securing indebtedness

that is less than $50,000, is not yet due and payable, and was incurred in the ordinary course of business, and (iii) such other Liens that relate to the purchase and installation of DVD Kiosks (exclusive of the DVD Kiosks contributed to Redbox by and on behalf of Ventures that Ventures treated as a capital contribution under Section 3.01(a) of the Redbox LLC Agreement) and DVDs and secures indebtedness that is not yet due and payable and was incurred in the ordinary course of business.

" Person " means any individual, corporation, company, association, partnership, limited liability company, joint venture, trust, unincorporated organization or Governmental Entity.

" Personal Property " has the meaning set forth in Section 3.18(b).

" Private Placement Legend " has the meaning set forth in Section 6.04.

" Pro Rata Share " has the meaning set forth in Section 7.03(i).

" Proceeding " has the meaning set forth in Section 3.10.

" Proprietary Information " means (a) any information, material or documents relating to Ventures, Redbox, any of their Affiliates and each of their businesses, assets, financial condition, operations, products, promotions, supplier relationships, trade secrets, know-how, strategies and prospects; (b) any information, material or documents obtained by Coinstar or its Affiliates during the course of meetings or discussions with Redbox, Ventures and their respective Affiliates and Representatives; (c) any research, work-product, findings, analyses or recommendations produced by Coinstar or its Affiliates for or in conjunction with Redbox, Ventures and their respective Affiliates; (d) the existence of this Agreement and any other agreement, or any negotiations relating to such agreements, between Redbox, Ventures and their respective Affiliates and Coinstar and its Affiliates; and (e) any information, material or documents that Coinstar or its Affiliates know or have reason to know is considered confidential or proprietary by Redbox, Ventures or their respective Affiliates; provided , however , that Proprietary Information shall not include any information that is generally available to the public other than as a result of disclosure by Coinstar or its Affiliates.

" Purchase, License and Service Agreement " means the agreement by and between McDonald's USA and Redbox, dated as of the Closing Date, for (i) the right for McDonald's USA to purchase DVD Kiosks, (ii) the license from McDonald's USA to Redbox for the right to place DVD Kiosks at selected McDonald's restaurants in the United States, and (iii) the service and operation of such DVD Kiosks by Redbox, substantially in the form attached hereto as **Exhibit C** .

" Real Property " has the meaning set forth in Section 3.18(a).

" Redbox " has the meaning set forth in the preamble.

" Redbox Assets " has the meaning set forth in Section 3.05(a).

" Redbox Business " has the meaning set forth in the recitals.

" Redbox Financial Statements " has the meaning set forth in Section 3.06(a).

" Redbox Interim Balance Sheet " has the meaning set forth in Section 3.06(a).

" Redbox Interim Balance Sheet Date " has the meaning set forth in Section 3.06(a).

" Redbox IP " has the meaning set forth in Section 3.09(a).

" Redbox LLC Agreement " has the meaning set forth in the recitals.

" Remedial Action " means any investigation, site assessment, monitoring or other evaluation of conditions relating to the environment at a site, or any clean-up, treatment, containment, removal, restoration, corrective action or remedial work required under any Environmental Law.

" Representative " or " Representatives " means, with respect to any Person, any of such Person's officers, directors, employees, agents, attorneys, accountants, consultants, equity financing partners or financial advisors or other Person associated with, or acting on behalf of, such Person.

" Requested Books and Records " has the meaning set forth in Section 3.14.

" Second Contribution Agreement " has the meaning set forth in the definition of Contribution Agreements set forth above.

" Securities Act " means the U.S. Securities Act of 1933, as amended from time to time, and the rules and regulations promulgated thereunder, as in effect from time to time.

" Services Agreement " means the Services Agreement by and between McDonald's Corporation and Redbox, dated as of the Closing Date, pursuant to which McDonald's Corporation will provide certain transitional services to Redbox.

" Share Purchase Agreement " has the meaning set forth in Section 7.03(i).

" Tax " or " Taxes " means all taxes, including any interest, liabilities, fines, penalties or additions to tax that may become payable in respect thereof, imposed by any Governmental Entity, which taxes shall include income taxes (including U.S. federal income taxes and state, local and foreign income taxes), payroll and employee withholding taxes, unemployment insurance, social security, sales and use taxes, value added taxes, business license taxes, environmental taxes, excise taxes, franchise taxes, gross or net receipts taxes, occupation taxes, real and personal property taxes, ad valorem taxes, stamp taxes, transfer taxes, capital taxes, import duties, withholding taxes, workers' compensation and other obligations of the same or of a similar nature whether arising before, on or after the date hereof.

" Tax Return " means any report, return, declaration, claim for refund or statement (including any information report, return or statement) in connection with Taxes, including any

schedule or attachment thereto or amendment thereof, required to be supplied to any Governmental Entity exercising any authority to impose, regulate, levy, assess or administer the imposition of any Tax.

" Test Markets " means the following eight test markets in which McDonald's USA or its Affiliates has placed or plans to place DVD Kiosks: Baltimore, Denver, Houston, Minneapolis/St. Paul, Las Vegas, Salt Lake City, St. Louis and Washington, D.C.

" Threshold Amount " has the meaning set forth in Section 7.03(h).

" Total Cash Contributions " has the meaning set forth in Section 2.01(b).

" Trademarks " has the meaning set forth in the definition of "Intellectual Property" set forth above.

" Transaction Agreements " means this Agreement, the Redbox LLC Agreement, the Purchase, License and Service Agreement, the Coinstar Agency Agreement, the Ventures Agency Agreement and the Services Agreement.

" Transferred Class A Interests " has the meaning set forth in Section 6.07(a).

" USPTO " has the meaning set forth in Section 3.09(d).

" Ventures " has the meaning set forth in the preamble.

" Ventures Agency Agreement " means the agency agreement, dated as of the Closing Date, by and between Redbox and Ventures authorizing Ventures to act as the exclusive marketing agent for Redbox at grocery chains, drug stores, mass merchants and warehouse clubs outside the United States, substantially in the form attached hereto as **Exhibit D** .

SECTION 1.02. General Interpretive Principles . Whenever used in this Agreement, except as otherwise expressly provided or unless the context otherwise requires, any noun or pronoun shall be deemed to include the plural as well as the singular and to cover all genders. The name assigned to this Agreement, the Section captions and the titles of all Exhibits and Schedules used herein are for convenience of reference only and shall not be construed to affect the meaning, construction or effect hereof. Unless otherwise specified, the terms "hereof," "herein" and similar terms refer to this Agreement as a whole (including the Exhibits and Schedules hereto), and references herein to Articles, Sections, Exhibits or Schedules refer to Articles, Sections, Exhibits or Schedules of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

ARTICLE II

LLC INTEREST PURCHASE AND SALE

SECTION 2.01. Purchase and Sale of the Interests .

(a) Upon the terms and subject to the conditions set forth in this Agreement, and in reliance upon the representations and warranties hereinafter set forth, at the Closing Redbox shall sell and deliver to Coinstar, and Coinstar shall purchase and accept from Redbox, a number of Class A Interests that will result in Coinstar owning forty-seven and 30/100 percent (47.30%) of the outstanding Class A Interests immediately after the Closing (the " Interests "), free and clear of all Liens, and together with all rights and obligations attaching thereto.

(b) The aggregate consideration to be paid by Coinstar for the Interests shall be an amount equal to (i) $20,000,000 (the " Initial Cash Consideration "), payable at the Closing, plus (ii) $12,000,000 (the " Conditional Cash Contribution "), payable on the one-year anniversary of the Closing Date, if all of the conditions set forth in Section 2.01(c) are met. Coinstar's " Total Cash Contribution " equals its Initial Cash Contribution plus its Conditional Cash Contribution, if made.

(c) Coinstar shall pay the Conditional Cash Contribution to Redbox, in immediately available funds by wire transfer as directed pursuant to instructions delivered by Redbox to Coinstar at least two (2) Business Days prior to the one-year anniversary of the Closing Date, if, on or prior to such anniversary, each of the following conditions is then satisfied:

(i) Redbox has either:

(A) installed at least 1,750 DVD Kiosks, including at least 750 DVD Kiosks deployed prior to or after Closing in the Test Markets, in locations owned or operated by any third party, including McDonald's USA and any Affiliates of Ventures; or

(B) (1) installed in locations owned or operated by McDonald's USA at least 750 DVD Kiosks in the Test Markets and (2) (x) installed an additional 1,000 DVD Kiosks in locations owned or operated by any third party, including any Affiliate of Ventures, and/or (y) obtained a legal, valid and binding obligation of any third party, including any Affiliate of Ventures, on terms and conditions approved by the Redbox Board of Managers to install no later than 180 days after the one-year anniversary of the Closing Date, an additional 1,000 DVD Kiosks (including any DVD Kiosks installed in locations owned or operated by McDonald's USA, including in the Test Markets, in excess of the 750 DVD Kiosks required pursuant to clause (A) above);

(ii) McDonald's USA has complied, in all material respects, with the terms of the Purchase, License and Service Agreement, from the Closing Date through the one-year anniversary of the Closing Date; provided that Redbox has not committed a material breach of the Purchase, License, and Service Agreement (that has not been cured) prior to

any breach of the Purchase, License, and Service Agreement by McDonald's USA that otherwise would legally excuse McDonald's USA from performing its obligations under the Purchase, License and Service Agreement (unless the material breach by Redbox was caused, or was not cured, by actions taken by Ventures as a member of Redbox or by Ventures' representatives in exercising their rights on the Redbox Board of Managers); provided , further that if this condition has not been satisfied, and its failure is the basis for Coinstar's not funding the Conditional Cash Contribution, Coinstar shall provide to McDonald's USA a written notice detailing the material breaches, and McDonald's USA shall have a period of ninety (90) days after the receipt of such written notice to cure the breaches, and should such cure be effectuated within such time period, Coinstar shall fund the Conditional Cash Contribution no later than five (5) Business Days after confirmation that the cure has been effectuated; and

(iii) Redbox has complied, in all material respects, with the terms of the Coinstar Agency Agreement, from the Closing Date through the one-year anniversary of the Closing Date (unless such breach of the Coinstar Agency Agreement by Redbox was caused by actions taken by Coinstar as a member of Redbox or by Coinstar's representatives in exercising their rights on the Redbox Board of Managers), provided that Coinstar has not committed a material breach of the Coinstar Agency Agreement (that has not been cured) prior to any breach of the Coinstar Agency Agreement by Redbox that otherwise would legally excuse Redbox from performing its obligations under the Coinstar Agency Agreement; provided , further that if this condition has not been satisfied, and its failure is the basis for Coinstar's not funding the Conditional Cash Contribution, Coinstar shall provide to Redbox a written notice detailing the material breaches, and Redbox shall have a period of ninety (90) days after the receipt of such written notice to cure the breaches, and should such cure be effectuated within such time period, Coinstar shall fund the Conditional Cash Contribution no later than five (5) Business Days after confirmation that the cure has been effectuated.

SECTION 2.02. Closing .

(a) The closing of the transactions contemplated by Section 2.01 (the " Closing ") shall take place at the offices of Ventures on a mutually agreeable date that is no later than December 1, 2005 (the " Closing Date "). The Closing is conditioned upon:

(i) Ventures and Coinstar agreeing upon a term sheet, in detail reasonably satisfactory to both Parties, outlining the terms upon which the Company may issue Class B Interests to designated employees, or classes of employees, of the Company and specifying the other types of employee incentive compensation that may be made available, with the Redbox Board of Manager's approval in accordance with the Redbox LLC Agreement, after the Closing to motivate employee performance;

(ii) the delivery of disclosure schedules by Redbox, effective as of the Closing Date, modifying the representations and warranties of Article III, that are in a form acceptable to Coinstar and in reliance upon which Coinstar is prepared to close the transactions contemplated by this Agreement. Prior to the date hereof, Ventures has disclosed in writing or orally to Coinstar certain information relating to matters covered by the representations and warranties of Article III and Article IV and has advised Coinstar and its legal counsel that, to the Knowledge of Redbox, based upon information currently available to them, the disclosure

schedules that Redbox will tender for attachment to this Agreement will not disclose any matters of a material nature that have not already been disclosed by the written and oral communications previously made to Coinstar during its due diligence review. If the disclosure schedules delivered by Redbox contain any matter not previously disclosed by Ventures or Redbox to Coinstar that is of a material nature, Coinstar shall not be obligated to accept such disclosure schedules. Matters requiring disclosure on the disclosure schedules may, however, arise after the execution of this Agreement and prior to the Closing, and should that occur, Redbox and Ventures may, to the extent applicable, add those items to modify the applicable disclosures, and Closing will be subject to Coinstar's acceptance of the modified disclosures; and

(iii) Redbox writing off fifty percent (50%) of the book value, as stated on the Redbox Interim Balance Sheet, of the DVD Kiosks manufactured by DVDPlay, provided that such write-off shall be allocated between Ventures, GAM and GARB based on the percentage of outstanding Class A Interests owned by each such member of Redbox.

(b) At the Closing:

(i) Redbox shall deliver to Coinstar (A) a certificate representing the Interests, and (B) a copy of each Transaction Agreement to which it is a party duly executed by it.

(ii) Ventures shall deliver to Coinstar (A) a copy of each Transaction Agreement to which it or any of its Affiliates is a party duly executed by it or such Affiliates and (B) the certified statement required by Section 3.22 confirming Redbox's receipt of Venture's Capital Contributions with a minimum value of $18,000,000.

(iii) Coinstar shall deliver to Redbox (A) the Initial Cash Consideration, in immediately available funds by wire transfer as directed pursuant to instructions delivered by Redbox to Coinstar at least two (2) Business Days prior to the Closing Date, and (B) a copy of each Transaction Agreement to which it is a party duly executed by it.

(iv) Redbox has delivered to Coinstar evidence confirming that all necessary registrations, filings, applications and notices have been made with the United States Patent and Trademark Office or any other domestic or foreign office to effectuate the transfer to Redbox of all of the right, title and interest to the Patents and the Trademarks that have been contributed to Redbox pursuant to the Contribution Agreements.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF REDBOX

Redbox hereby represents and warrants to, and agrees with, Coinstar that, as of the Closing Date:

SECTION 3.01. Organization and Qualification of Redbox . Redbox is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware and has all limited liability company power and authority to own or lease and operate its properties and assets and to conduct the Redbox Business as it is currently being conducted. On the Closing Date Redbox will deliver to Coinstar a complete and correct copy of the Second Amended and Restated Limited Liability Company Agreement of Redbox, dated as of the Closing Date, which shall be in full force and effect upon the consummation of

the transactions contemplated by this Agreement, and which will supersede in all respects all prior versions of such agreement.

SECTION 3.02. Authorization of Agreements .

(a) Redbox has all necessary power and authority to execute, deliver and perform its obligations under the Transaction Agreements to which it is a party. The execution, delivery and performance of the Transaction Agreements to which it is a party, and the consummation by Redbox of the transactions contemplated thereby, have been duly authorized by all necessary action on the part of Redbox.

(b) The Transaction Agreements to which it is a party have been duly executed and delivered by Redbox, and each such agreement constitutes a legal, valid and binding obligation of Redbox, enforceable against Redbox in accordance with its terms, subject to limitations imposed by applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting the rights and remedies of creditors generally and to general principles of equity.

SECTION 3.03. Consents; No Conflicts .

(a) No Authorization from, or registration, declaration or filing with, any Governmental Entity is required to be made or obtained by Redbox in connection with the execution, delivery and performance of the Transaction Agreements to which Redbox is a party and the consummation of the transactions contemplated thereby.

(b) Except as set forth on **Schedule 3.03(b)** , the execution and delivery of the Transaction Agreements to which Redbox is a party do not, and the performance of the obligations set forth therein and the consummation of the transactions contemplated thereby will not, (i) violate or conflict with any term, condition or provision of the organizational documents of Redbox; (ii) give rise to any preemptive rights or rights of first refusal on behalf of any Person under any applicable Law or any provision of the organizational documents or other instrument applicable to Redbox; (iii) conflict with, contravene or result in a breach or violation of any of the terms or provisions of, or constitute a default (with or without notice or the passage of time or both) under, or result in or give rise to a right of termination, cancellation, acceleration or modification of any right or obligation under, or require any consent, waiver or approval under, any note, bond, debt instrument, indenture, mortgage, deed of trust, lease, loan agreement, joint venture agreement, development agreement, contract, license or any other agreement, instrument or obligation to which Redbox is a party or by which Redbox or any of its properties are bound; or (iv) violate or conflict with any Law applicable to Redbox or the Redbox Business.

SECTION 3.04. Capitalization of Redbox; Securities; No Subsidiaries .

(a) Immediately prior to the execution and delivery of this Agreement, (i) the authorized membership interests of Redbox consists of 100 Class A Interests, all of which are issued and outstanding; provided that additional Class A Interests will be issued to Ventures on or prior to Closing due to additional capital contributions made by Ventures prior to Closing and the number of authorized, issued and outstanding membership interests of Redbox will be increased between the date of this Agreement and the Closing Date so that Class B Interests may be issued at the Closing Date, as contemplated by the Redbox LLC Agreement; (ii)

Schedule 3.04(a) sets forth a complete and correct list of all holders of Class A Interests, including each such Person's name and the number of Class A Interests held by such Person as of the Closing Date; and (iii) all of such issued and outstanding Class A Interests are duly authorized, validly issued, fully paid and nonassessable, and are free and clear of all Liens.

(b) Other than as may be issued at the Closing in accordance with any employee incentive compensation referred to in Section 2.02(a), there are no authorized or outstanding (or obligations to authorize or issue) Derivative Securities of Redbox and there are no outstanding or authorized interest appreciation, phantom interest, profit participation or similar rights with respect to Redbox.

(c) No Person has any right to require Redbox to register securities of Redbox under the Securities Act, and other than the Redbox LLC Agreement there are no shareholder or similar agreements to which Redbox is a party. There are no voting trusts, proxies or other agreements or understandings with respect to voting the membership interests of Redbox.

(d) The Interests are duly authorized, and when issued to Coinstar pursuant to this Agreement will be validly issued, fully paid (except for the Conditional Capital Contribution, if it becomes payable) and nonassessable and will be free and clear of all Liens. Upon issuance, the Interests shall represent forty-seven and 30/100 percent (47.30%) of all outstanding Class A Interests.

(e) Redbox does not have any subsidiaries, as defined in Rule 405 promulgated under the Securities Act.

SECTION 3.05. Title to Redbox Assets; Liens; Condition of Redbox Assets .

(a) Immediately preceding and following the Closing, Redbox will have good, valid and marketable title to, or a good and valid lease, license or other similar right in, each of the assets used in the conduct of the Redbox Business (collectively the " Redbox Assets "), free and clear of all Liens other than Permitted Liens.

(b) Except for the Permitted Liens, the Redbox Assets are not subject to any Liens and, there are no facts, events or circumstances which, with the passage of time or the giving of notice or both, would result in or give rise to the creation or imposition of any Lien on the Redbox Assets.

SECTION 3.06. Financial Statements .

(a) Redbox has delivered to Coinstar correct and complete copies of the following financial information, which are set forth in **Schedule 3.06(a)** (collectively, the " Redbox Financial Statements "): annual income statement for 2004; monthly and year-to-date income statements for June 2005, July 2005, August 2005, September 2005 and October 2005; balance sheets for June 2005, July 2005, August 2005, September 2005 and October 2005; and cash flow statements for June 2005, July 2005, August 2005 and September 2005; and the Redbox interim balance sheet, dated as of October 31, 2005 (the " Redbox Interim Balance Sheet " and such date, the " Redbox Interim Balance Sheet Date "). The Redbox Financial Statements were prepared from the books and records kept by

Redbox for the Redbox Business and fairly present the financial position of the Redbox Business as of their respective dates and the results of operations of the Redbox Business for the respective years or periods then ended in accordance with U.S. generally accepted accounting principles consistently applied during the periods involved, except as indicated in such statements or in the notes thereto (" GAAP "). Each accrual reflected in the Redbox Financial Statements is adequate to meet the pro rata portion of the underlying Liability accrued as of the date of each Redbox Financial Statement (except to the extent corrected in any subsequent Redbox Financial Statement). The foregoing balance sheets reflect all properties and assets, real, personal or mixed, that are used by Redbox in the Redbox Business and are required to be reflected on such balance sheet pursuant to GAAP.

(b) As of the Closing Date, Redbox owes no outstanding debt to, and has no Liabilities to, Ventures, McDonald's Corporation, McDonald's USA or any of their respective Affiliates, other than certain obligations owed under the Transaction Agreements (which will be effective as of the Closing Date).

SECTION 3.07. Undisclosed Liabilities . Since the Redbox Interim Balance Sheet Date, Redbox has not incurred any Liabilities outside of the ordinary course of business that would, individually or in the aggregate, have a Material Adverse Effect on Redbox.

SECTION 3.08. Absence of Certain Changes . Except for transactions contemplated by the Transaction Agreements, transactions related to the contribution of assets from Ventures or GAM to Redbox or transactions contemplated by the Share Purchase Agreement by and among Ventures, Redbox, GAM, GARB and the GAM shareholders party thereto, dated as of July 1, 2005, and except as set forth on **Schedule 3.08** , from the Redbox Interim Balance Sheet Date to the Closing Date, Redbox has conducted the Redbox Business in the ordinary and usual course, and there has not occurred any of the following:

(i) any authorization, creation (by way of reclassification or otherwise), issuance or sale of any Equity Securities or Derivative Securities of Redbox, except for Class A Interests issued to Ventures for additional capital contributions to Redbox prior to the Closing Date (which issuance is reflected in the number of Class A Interests identified on Schedule 3.04(a));

(ii) any acquisition or redemption, directly or indirectly, of any Equity Securities of Redbox;

(iii) any split or combination of the Equity Securities of Redbox, or the declaration, set aside or payment of any dividend or distribution (whether in cash, stock or property) on any of its membership interests;

(iv) any acquisition, assignment, transfer, conveyance, license, commitment or disposition of assets by Redbox having a fair value or for a purchase price in excess of $100,000, in the aggregate, other than acquisitions or dispositions made in the ordinary course of business or dispositions of obsolete or surplus assets, including any DVD-

dispensing machines made by DVDPlay, for cash consideration in amounts equal to the fair market value thereof;

(v) any violation, breach or default of, or taking or failing to take any action that (with or without notice or lapse of time or both) would constitute a violation or breach of, or default under, any term or provision of any contract to which Redbox is a party or by which its assets are bound, whether such breach or default is on the part of Redbox or, to the Knowledge of Redbox, any other party or parties to such contract;

(vi) any incurrence or assumption of any indebtedness, entry into any financing arrangements or modification of the terms of any existing indebtedness or financing arrangements;

(vii) any assumption, guarantee, endorsement or otherwise becoming liable or responsible (whether directly, contingently or otherwise) for any Liabilities of any other Person;

(viii) any loans, advances or capital contributions to, or investments in, any other Person;

(ix) any incurrence of any Liens on any of the Redbox Assets other than Permitted Liens;

(x) any change to Redbox's accounting policies and practices;

(xi) the granting of any stock-related, performance or similar awards or bonuses;

(xii) any forgiveness of any loans to employees, officers or directors, members or any of their respective Affiliates;

(xiii) any entry into any new, or amendment to any existing, employment, severance, consulting or salary continuation agreements with any members, officers, directors or employees, or granting of any increases in the compensation or benefits payable to members, officers, directors or employees;

(xiv) any entry into, amendment of or extension of any collective bargaining or other labor agreement;

(xv) any adoption, amendment or termination of any employee benefit plan or arrangement;

(xvi) any settlement of or agreement to settle any Proceeding (including any Proceeding relating to this Agreement or the transactions contemplated hereby) for amounts that are in excess of $25,000, in the aggregate;

(xvii) any damage, destruction, theft or other casualty loss (whether or not covered by insurance) with respect to the Redbox Assets;

(xviii) the occurrence of, or any adoption of a plan or any agreement or arrangement with respect to or resolutions providing for, any Organic Change; or

(xix) any change, condition, occurrence, circumstance or other event that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect on Redbox.

SECTION 3.09. Intellectual Property .

(a) **Redbox Intellectual Property** . Except for commercial off-the-shelf software licensed or sub-licensed by Redbox as the licensee and except to the extent Redbox as licensor has licensed the Redbox IP to third parties under licenses listed on **Schedule 3.09(b)** , Redbox (i) owns free and clear of all Liens (other than Permitted Liens) or (ii) has the right to use all Intellectual Property that is used in the Redbox Business as conducted at the Closing Date (such Intellectual Property hereinafter referred to as the " Redbox IP "). **Schedule 3.09(a)** lists all registered Redbox IP and applications to register Redbox IP, in each case that are owned by Redbox.

(b) **License Agreements** . **Schedule 3.09(b)** lists all license agreements, other than license agreements for commercial off-the-shelf software licensed or sub-licensed by Redbox, under which Redbox has licensed any portion of the Redbox IP from others and all license agreements under which Redbox has licensed Redbox IP to others. Neither the execution, delivery or performance of this Agreement nor the consummation of the transactions contemplated herein in accordance with their terms will: (i) constitute a breach of or default under any such license agreement; (ii) cause the forfeiture or termination of, or give rise to a right of forfeiture or termination of, any Redbox IP; or (iii) impair the right of Redbox to use any Redbox IP or portion thereof in the manner currently used by Redbox. Except as set forth on **Schedule 3.09(b)** , no royalties, honoraria, fees, or other payments are payable by Redbox to any Person by reason of the use, possession, sale, license or other exploitation of any Redbox IP or portion thereof in the manner currently used by Redbox, and none will become payable as a result of the consummation of the transactions contemplated by this Agreement.

(c) **No Infringement** . The Redbox IP (i) does not constitute a breach or default under any license agreement listed on **Schedule 3.09(b)** and (ii) to the Knowledge of Redbox, does not infringe or constitute a misappropriation of any Intellectual Property right of any Person. Except as set forth on **Schedule 3.09(c)** , to the Knowledge of Redbox, there is no currently pending or threatened claim or litigation against Redbox contesting the validity, ownership or right of Redbox to use or exploit any Redbox IP. Notwithstanding anything in this Section 3.09(c) to the contrary, this paragraph does not relate to the Intellectual Property rights of DVDPlay, Inc., a Delaware corporation (" DVDPlay "), which are separately covered in Section 3.09(d).

(d) **No Infringement of DVDPlay Patents.** The Redbox IP (i) does not and will not infringe or constitute a misappropriation of any currently existing or future claims that have a date of priority of November 1, 2005 or earlier and that are in any DVDPlay Patent and/or (ii) does not infringe or constitute a misappropriation of an Intellectual Property right of DVDPlay. For the purpose of this Section 3.09(d), " DVDPlay Patent " means a patent that issues or is granted from, is based on or claims priority to any publicly available patent application pending before the U.S. Patent & Trademark Office (" USPTO ") for which DVDPlay was, as of November 1, 2005, the assignee of record with respect to such application, according to the publicly available records in the USPTO on that date, and, in particular, U.S. Patent Application Ser. Nos. 09/903,444 and 09/578,631.

(e) **Confidentiality.** Redbox has taken commercially reasonable steps to protect, preserve and maintain the confidentiality of its confidential and proprietary information and data and confidential and proprietary information in its possession or custody. Without limiting the generality of the foregoing, Redbox has not disclosed in violation of any agreement with DVDPlay any confidential or proprietary information of DVDPlay (including DVDPlay's human-readable version of computer software code) to any Person other than an employee or consultant to Redbox under a written nondisclosure agreement.

(f) **Agreements with Consultants and Contractors.** Each consultant and contractor of Redbox (other than employees of McDonald's Corporation) involved in the development of Intellectual Property for Redbox has executed and delivered to Redbox a services agreement providing for the assignment of all right, title and interest that such consultant or contractor may have or may hereafter acquire in or to such Intellectual Property.

SECTION 3.10. Litigation . Except as set forth on **Schedule 3.10** , there are no claims, suits, actions, proceedings, arbitrations, administrative notices, administrative actions or investigations (each, a " Proceeding ") pending or, to the Knowledge of Redbox, threatened, against or affecting Redbox, and no judgments, decrees, injunctions, rules, stipulations or orders outstanding against or applicable to Redbox or against or applicable to any of its properties or businesses.

SECTION 3.11. Compliance with Laws; Authorizations . The Redbox Business has been conducted and is currently being conducted in compliance with all applicable Laws. All Authorizations required by Redbox to conduct the Redbox Business have been obtained, and all Authorizations required by Redbox to conduct the Redbox Business as now conducted are valid and in full force and effect. Redbox is in compliance with the terms and requirements of all such Authorizations. Redbox has not received any written notice or other written communication from or on behalf of any Governmental Entity regarding (a) any prior, pending, threatened or possible revocation, withdrawal, suspension, termination or modification of, or the imposition of any conditions with respect to, any Authorization; (b) any violation of any Law by Redbox; (c) any charge, complaint, Proceeding or review by any Governmental Entity with respect to the Redbox Business; or (d) any other limitations on the conduct of the Redbox Business.

SECTION 3.12. Contracts . Except for the Transaction Agreements and those agreements set forth on **Schedule 3.12** (the " Material Contracts "), Redbox is not a party to any material contracts or agreements, written or oral, with any other Persons. Each of the Material Contracts is a valid, binding and enforceable obligation of Redbox and, to the Knowledge of Redbox, the other parties thereto, in accordance with its terms, subject to limitations imposed by applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting the rights and remedies of creditors generally and to general principles of equity. Redbox has performed all obligations imposed upon it under the Material Contracts, and there are not, under any of such Material Contracts, any defaults or events of default on the part of Redbox or, to the Knowledge of Redbox, any other party thereto, that would have a Material Adverse Effect on Redbox. To the Knowledge of Redbox, no party to any Material Contract intends to cancel, terminate or refuse to renew such Material Contract or to decline to exercise any option or right thereunder.

SECTION 3.13. Employees; Employee Benefit Plans .

(a) Redbox does not have, nor has it ever had, any employees.

(b) Redbox has never sponsored, maintained or contributed to (or been obligated to sponsor, maintain or contribute to), or been party to, any Benefit Plan, nor does it have (nor could it ever have) any Liability, direct or indirect, contingent or otherwise (including any Liability arising out of an indemnification, guarantee, hold harmless or similar agreement), under or with respect to any Benefit Plan that was adopted, established or in effect prior to the Closing Date.

SECTION 3.14. Books and Records . Redbox has made available to Coinstar, to the extent requested, copies of all books, files, archives, journals, ledgers, registers, logs, statements, databases, data, I-9 forms, legal records and other records and notations, in whatever form recorded, relating or pertaining to all financial and/or operational information that Redbox uses in, and that are necessary to, the conduct of the Redbox Business (collectively, the " Requested Books and Records "), whether in the possession of Redbox or a third party. The Requested Books and Records of Redbox are complete and accurate in all material respects.

SECTION 3.15. Financial Advisors and Brokers . No Person has acted, directly or indirectly, as a broker, finder or financial advisor of Redbox in connection with this Agreement or the transactions contemplated thereby, and no Person is entitled to receive any broker's, finder's or similar fee or commission in respect thereof based in any way on any agreement, arrangement or understanding made by or on behalf of Redbox or any of its directors, officers, members or employees.

SECTION 3.16. Exemption from Registration . Assuming the representations and warranties of Coinstar set forth in Article V are true and correct, the offer and sale of the Interests made pursuant to this Agreement will be in compliance with the Securities Act and any applicable state securities Laws and will be exempt from the registration requirements of the Securities Act and state securities Laws.

SECTION 3.17. Taxes . All Tax obligations of Redbox with respect to its operation of the Redbox Business have been timely paid or are being contested in good faith, and, except as reflected in the Redbox Interim Balance Sheet, Redbox has no liability for any Tax obligations with respect to its operation of the Redbox Business and no interest or penalties have accrued or are accruing with respect thereto, whether state, county, local or otherwise, with respect to any periods prior to the Closing Date.

SECTION 3.18. Property .

(a) Set forth on **Schedule 3.18(a)** is a complete and accurate list of all real property leased, licensed or rented by Redbox for use in the operation of the Redbox Business in locations other than McDonald's restaurants (the " Real Property "). Redbox does not own fee title in any real property.

(b) Redbox has provided to Coinstar a complete and accurate list of all personal property owned, leased or rented by Redbox for use in the operation of the Redbox Business having, on an individual basis, a net book value in excess of $10,000 (the " Personal Property ").

(c) Redbox has delivered to Coinstar true and complete copies of all leases, subleases, rental agreements, contracts of sale, tenancies or licenses of any portion of the Real Property and the Personal Property. Except as set forth in **Schedule 3.18 (c)** (whether by item or by category), the Redbox Assets, including the Real Property and the Personal Property, include all property used in the conduct of the Redbox Business as presently conducted.

(d) Redbox has good leasehold title to all leased Real Property, subject to (i) Permitted Liens, (ii) easements, rights of way, and other similar encumbrances that do not affect the use of the properties or assets subject thereto or affected thereby, and (iii) such imperfections or irregularities of title or liens as do not affect the use of the properties or assets subject thereto or affected thereby, none of which impair or reduce the value or utility of the Real Property for use in the Redbox Business as presently conducted. Redbox does not sublease or sublicense to any third party any Real Property.

(e) To the Knowledge of Redbox, there are no applicable adverse zoning, building or land use codes or rules, ordinances, regulations or other restrictions relating to zoning or land use that currently or may prospectively prevent, or cause the imposition of material fines or penalties as the result of, the use of all or any portion of the Real Property for the conduct thereon of the Redbox Business as presently conducted. Redbox has received all necessary approvals with regard to occupancy and maintenance of the Real Property. Except as specifically set forth in **Schedule 3.18(e)** , Redbox has no knowledge of any physical defect in the Real Property.

(f) Each lease or license of any portion of the Real Property, and each lease, license, rental agreement, contract of sale or other agreement to which Personal Property is subject, is a valid, binding and enforceable obligation of Redbox and, to the Knowledge of Redbox, the other parties thereto. Redbox has performed all obligations imposed on it

thereunder, and neither Redbox nor, to the Knowledge of Redbox, any other party thereto is in default thereunder in any material respect, nor is there any event that with notice or lapse of time, or both, would constitute a default thereunder by Redbox or, to the Knowledge of Redbox, any other party thereto. To the Knowledge of Redbox, no party to any such lease, license, rental agreement, contract of sale or other agreement intends to cancel, terminate or refuse to renew the same or to exercise or decline to exercise any option or other right thereunder. No Real Property or Personal Property is subject to any lease, license, contract of sale or other agreement that could reasonably be expected to have a Material Adverse Effect on the Redbox Business.

SECTION 3.19. Equipment . The DVD Kiosks owned by Redbox are in good operating condition and repair, subject to normal wear and tear, and are adequate for the conduct of the Redbox Business.

SECTION 3.20. Environmental Matters . Redbox is and has been in compliance with all applicable Environmental Laws in the conduct of the Redbox Business and the operation and ownership of the Redbox Assets. Redbox has not received any written notice from any Governmental Entity that is reasonably expected to give rise to any liability to Redbox with respect to any violation of any Environmental Law or with respect to any Remedial Action required under any Environmental Law.

SECTION 3.21. Working Capital . As of the Closing Date, Redbox has assets classified as "current assets" in accordance with GAAP equal to all liabilities classified as "current liabilities" in accordance with GAAP; provided , however , that to the extent Redbox has incurred, but not paid, as of the Closing Date, current liabilities to acquire and install DVD Kiosks, such current liabilities shall not be taken into account for purposes of determining Redbox's working capital as of the Closing Date. Notwithstanding anything in this Section 3.21 to the contrary, Ventures shall be required to make the minimum $18,000,000 capital contribution, which is referenced in Section 3.22, to Redbox prior to the Closing Date.

SECTION 3.22. Ventures' Capital Contribution . Prior to the Closing Date, Ventures has contributed to Redbox a combination of cash, advertising and/or other assets with a minimum value of $18,000,000. Such capital contributions consisted of (i) not less than 750 DVD Kiosks (the " Contributed Machines ") valued at their acquisition costs plus installation costs incurred and paid by Ventures or its Affiliates; (ii) all leasehold improvements completed or to be completed for the primary purpose of enabling the installation of the Contributed Machines, valued at actual cost incurred and paid by Ventures or its Affiliates; provided , however , that such leasehold improvements shall remain intact at all McDonald's restaurants after the Contributed Machines have been removed from such locations; and (iii) third-party advertising costs incurred and paid through the Closing Date by McDonald's USA or its franchisees or Affiliates to support the launch of the DVD Kiosks in the Test Markets. Ventures has delivered to Coinstar a statement of its prior capital contributions to Redbox, certified by its Chief Investment Officer, confirming that such Capital Contributions have been made to Redbox prior to the Closing Date. However, as long as Ventures has made such minimum capital contribution (including the contribution of at least 750 DVD Kiosks) to Redbox, Redbox may have certain additional Liabilities associated with the installation of the Contributed Machines, or the purchase of additional DVD Kiosks, and such Liabilities shall not be treated as current

liabilities for purposes of Section 3.21 and Ventures shall have no obligation to pay, directly or indirectly, such Liabilities.

SECTION 3.23. Contribution Agreements . With respect to each of the Contribution Agreements, as of the Closing Date:

(a) (i) Redbox has received all right, title and interest in the assets that were to be contributed to it under that Contribution Agreement (in each case, the " Contributed Assets "), (ii) all filings, registrations, applications and notices to or with Governmental Entities necessary to transfer such interest to Redbox have been duly and properly made, and (iii) there are no approvals or consents from either third parties or Governmental Entities (other than those previously obtained and currently in effect) required or necessary to make such transfers effective and binding upon the affected parties;

(b) None of the contributing parties has claimed to retain an interest in any of the Contributed Assets, or in any way contested Redbox's right, title and interest to the Contributed Assets;

(c) As relates to the First and Second Contribution Agreements, McDonald's Corporation has not retained, nor does it claim to retain, any assets related to the Redbox Business, other than the "Excluded Assets" identified in the First Contribution Agreement;

(d) As relates to the GAM Contribution Agreement, Redbox did not assume any of the Liabilities of GAM; however, to the extent that Redbox might have any Liabilities as a successor in interest to GAM's business, Ventures shall be responsible for such Liabilities except to the extent that they are reflected in the Redbox Interim Balance Sheet; and

(e) As relates to the First and Second Contribution Agreement, Redbox did not assume, and is not responsible for, any of the Liabilities of McDonald's Corporation, except for the liabilities referenced in the First Contribution Agreement (the " Assumed Obligations "). Such Assumed Obligations have either been paid prior to the Closing Date or are reflected in the Redbox Interim Balance Sheet, and, in either event, are obligations incurred by McDonald's Corporation in the ordinary course of conducting the Redbox Business prior to the contribution of assets to, and the assumption of Liabilities by, Redbox under the First Contribution Agreement.

SECTION 3.24. Termination of Agreements . Except for the Transaction Agreements and the Share Purchase Agreement, all contracts, agreements and arrangements between Redbox, on the one hand, and Ventures, McDonald's USA, McDonald's Corporation and any of their respective Affiliates, on the other hand, have been terminated.

SECTION 3.25. No Employee Disputes . Inasmuch as Redbox has not had any employees prior to the Closing Date, to the Knowledge of Redbox, there are no disputes or disciplinary actions pending or threatened between Redbox and any current or prospective employee. Redbox has no management, employment or other contracts for employment or executive services with any employees.

SECTION 3.26. Absence of Illegal Payments . Neither Redbox nor any director, officer, agent, employee or other person acting on behalf of Redbox has used any of Redbox's funds for contributions, payments, gifts or entertainment to any person, or made any expenditures relating to political activity to any government official or other person, in violation of applicable Law. Furthermore, neither Redbox nor any director, officer, agent, employee or other person acting on behalf of Redbox has accepted or received, to the Knowledge of Redbox, any contribution, payments, gifts or expenditures in connection with the operation of the Redbox Business in violation of applicable Law.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF VENTURES

Ventures hereby represents and warrants to, and agrees with, Coinstar that, as of the Closing Date:

SECTION 4.01. Organization and Qualification . Ventures is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware and has all limited liability company power and authority to own or lease and operate its properties and assets and to conduct its business as it is currently being conducted.

SECTION 4.02. Authorization of Agreements .

(a) Ventures has all necessary power and authority to execute, deliver and perform its obligations under the Transaction Agreements to which it is a party. The execution, delivery and performance of the Transaction Agreements to which it is a party, and the consummation by Ventures of the transactions contemplated thereby, have been duly authorized by all necessary action on the part of Ventures.

(b) The Transaction Agreements to which it is a party have been duly executed and delivered by Ventures, and each such agreement constitutes a legal, valid and binding obligation of Ventures, enforceable against Ventures in accordance with its terms, subject to limitations imposed by applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting the rights and remedies of creditors generally and to general principles of equity.

SECTION 4.03. Consents; No Conflicts .

(a) No Authorization from, or registration, declaration or filing with, any Governmental Entity is required to be made or obtained by Ventures in connection with the execution, delivery and performance of the Transaction Agreements to which Ventures is a party and the consummation of the transactions contemplated thereby.

(b) The execution and delivery of the Transaction Agreements to which Ventures is a party does not, and the performance of the obligations set forth therein and the consummation of the transactions contemplated thereby will not, (i) violate or conflict with any

term, condition or provision of the organizational documents of Ventures; (ii) conflict with, contravene or result in a breach or violation of any of the terms or provisions of, or constitute a default (with or without notice or the passage of time or both) under, or result in or give rise to a right of termination, cancellation, acceleration or modification of any right or obligation under, or require any consent, waiver or approval under, any note, bond, debt instrument, indenture, mortgage, deed of trust, lease, loan agreement, joint venture agreement, development agreement, contract, license or any other agreement, instrument or obligation to which Ventures is a party or by which Ventures, or any of its properties, is bound; or (iii) violate or conflict in any material respect with any Law applicable to Ventures or its business.

SECTION 4.04. Financial Advisors and Brokers . No Person has acted, directly or indirectly, as a broker, finder or financial advisor of Ventures in connection with this Agreement or the transactions contemplated thereby, and no Person is entitled to receive any broker's, finder's or similar fee or commission in respect thereof based in any way on any agreement, arrangement or understanding made by or on behalf of Ventures or any of its directors, officers, members or employees.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF COINSTAR

Coinstar hereby represents and warrants to, and agrees with, Redbox and Ventures that, as of the Closing Date:

SECTION 5.01. Organization and Qualification of Coinstar . Coinstar is a corporation duly incorporated, validly existing and in good standing under the Laws of the State of Delaware and has all corporate power and authority to own or lease and operate its properties and assets and to conduct its business as it is currently being conducted.

SECTION 5.02. Authorization of Agreements .

(a) Coinstar has all necessary power and authority to execute, deliver and perform its obligations under the Transaction Agreements to which it is a party. The execution, delivery and performance of the Transaction Agreements, and the consummation by Coinstar of the transactions contemplated thereby, have been duly authorized by all necessary action on the part of Coinstar, including any approval of shareholders or the board of directors or similar governing body of Coinstar.

(b) Each of the Transaction Agreements to which it is a party has been duly executed and delivered by Coinstar, and each such agreement constitutes a legal, valid and binding obligation of Coinstar, enforceable against Coinstar in accordance with its terms, subject to limitations imposed by applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting the rights and remedies of creditors generally and to general principles of equity.

SECTION 5.03. Consents; No Conflict .

(a) No Authorization from, or registration, declaration or filing with, any Governmental Entity is required to be made or obtained by Coinstar in connection with the execution, delivery and performance of any of the Transaction Agreements to which Coinstar is a party and the consummation of the transactions contemplated thereby.

(b) The execution and delivery of each of the Transaction Agreements to which Coinstar is a party does not, and the performance of the obligations set forth therein and the consummation of the transactions contemplated thereby will not, (i) violate or conflict with any term, condition or provision of the organizational documents of Coinstar; (ii) conflict with, contravene or result in a breach or violation of any of the terms or provisions of, or constitute a default (with or without notice or the passage of time or both) under, or result in or give rise to a right of termination, cancellation, acceleration or modification of any right or obligation under, or require any consent, waiver or approval under, any note, bond, debt instrument, indenture, mortgage, deed of trust, lease, loan agreement, joint venture agreement, development agreement, contract, license or any other agreement, instrument or obligation to which Coinstar is a party or by which Coinstar, or any property of Coinstar, is bound or otherwise affected; or (iii) violate or conflict with any Law applicable to Coinstar or its business.

SECTION 5.04. Ownership of Interests; Purpose of Investment . The Interests constitute an equity investment and Coinstar is acquiring the Interests pursuant to this Agreement for its own account solely for the purpose of investment and not with a view to, or for sale in connection with, any distribution thereof in violation of the Securities Act. Coinstar acknowledges that the Interests have not been registered under the Securities Act and may be sold or disposed of in the absence of such registration only pursuant to an exemption from the registration requirements of the Securities Act.

SECTION 5.05. Investor Status . Coinstar represents and warrants that it is an "accredited investor" within the meaning of Regulation D. By reason of its business and financial experience, sophistication and knowledge, Coinstar has such knowledge and experience in financial and business matters that it is capable of evaluating the risks and merits of the investment made pursuant to this Agreement. Coinstar confirms that it is able (a) to bear the economic risk of this investment, (b) to hold the Interests for an indefinite period of time, and (c) to bear a complete loss of its investment. Coinstar represents that it has sufficient liquid assets so that the illiquidity associated with this investment will not cause any undue financial difficulties or affect its ability to provide for its current needs and possible financial contingencies.

SECTION 5.06. Restricted Securities . Coinstar understands that the Interests are characterized as "restricted securities" under the Securities Act inasmuch as they are being acquired from Redbox in a transaction not involving a public offering and that under the Securities Act such securities may be resold without registration only in certain limited circumstances. In this connection, Coinstar represents that it is familiar with Rule 144 promulgated under the Securities Act, as presently in effect, and understands the resale limitations imposed thereby and by the Securities Act.

SECTION 5.07. Access to Information . In order to conduct its own independent investigation, review and analysis of the business, operations, financial condition, assets and Liabilities of Redbox, Coinstar has been given access to all requested information about Redbox, has received physical delivery of all documents that Coinstar has requested, and has had adequate opportunity to ask questions of, and receive answers from, Representatives of Redbox concerning the business, operations, financial condition, assets and Liabilities of Redbox and other matters relevant to its investment in the Class A Interests. In entering into this Agreement, Coinstar acknowledges that it has relied solely upon the aforementioned investigation, review and analysis and not on any factual representations of Ventures, Redbox or any of their respective Representatives (except the specific representations and warranties set forth in Articles III and IV of this Agreement).

SECTION 5.08. Financial Advisors and Brokers . No Person has acted, directly or indirectly, as a broker, finder or financial advisor of Coinstar or any of its Affiliates in connection with this Agreement or the transactions contemplated thereby, and no Person is entitled to receive any broker's, finder's or similar fee or commission in respect thereof based in any way on any agreement, arrangement or understanding made by or on behalf of Coinstar or any of its Affiliates, directors, officers, shareholders or employees.

SECTION 5.09. DVDXpress Investment . Coinstar has entered into a Credit Agreement dated as of August 5, 2005 with Video Vending New York, Inc. (d/b/a DVDXpress) (" DVDXpress " and such agreement, the " DVDXpress Credit Agreement ") pursuant to which Coinstar has loaned, or will loan, DVDXpress up to $4,500,000 and that contemplates that DVDXpress shall negotiate, and cause DVDXpress' Principal Shareholders (as defined in the DVDXpress Credit Agreement) to negotiate, in good faith, to enter into an option agreement with Coinstar pursuant to which Coinstar will have the option to acquire DVDXpress or its assets, whether by stock purchase, asset purchase, merger or otherwise (the " DVDXpress Option "). The DVDXpress Credit Agreement is the valid and binding obligation of Coinstar enforceable against Coinstar in accordance with its terms, subject to limitations imposed by applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting the rights and remedies of creditors generally and to general principles of equity. Coinstar (a) has delivered to Redbox and Ventures complete and correct copies, with the exception of the redacted sections as noted therein (including the redaction of all of the terms and conditions which the parties have agreed to in connection with the DVDXpress Option), of the DVDXpress Credit Agreement, as amended to date and which as so delivered are in full force and effect, and (b) shall keep Redbox and Ventures reasonably informed as to the material terms of any agreement entered into by Coinstar with respect to the DVDXpress Option. Coinstar may assign its rights (including with respect to the DVDXpress Option) or participations under the DVDXpress Credit Agreement to Redbox without the consent of DVDXpress. The DVDXpress Option may be exercised by Coinstar or its assignee without the payment of any equity securities of Coinstar or any of its Affiliates.

ARTICLE VI

COVENANTS

SECTION 6.01. Taking of Necessary Action . After the date hereof, each Party shall, and shall use its reasonable best efforts to cause any of its Affiliates to, in addition to any other obligations they may assume pursuant to the Transaction Agreements, cooperate with and provide to[the other Party such assistance as that Party may reasonably request with respect to the transactions contemplated by this Agreement.

SECTION 6.02. Confidentiality . Except as agreed with Redbox, Coinstar shall, and shall cause all of its Affiliates to, keep strictly confidential, and not divulge, all Proprietary Information and implement all measures necessary to maintain such confidentiality. Coinstar shall only provide Proprietary Information to those Affiliates of Coinstar and its advisors, lawyers and accountants on a need-to-know basis. Notwithstanding anything herein to the contrary, Coinstar (and each Representative of Coinstar) may (a) consult with any tax advisor regarding the tax treatment or tax structure of the transactions contemplated by this Agreement and (b) disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions and other tax analysis) that are provided to Coinstar relating to such tax treatment or tax structure; provided , however , that clause (b) shall not apply until the earliest of (i) the date of the public announcement of discussions relating to the transactions contemplated by this Agreement, (ii) the date of the public announcement of the transactions contemplated by this Agreement, or (iii) the date of the execution of this Agreement. For this purpose, "tax structure" is limited to any facts relevant to the tax treatment of the transactions contemplated by this Agreement, and does not include information relating to the identity of the Parties.

SECTION 6.03. Publicity . Ventures and Coinstar shall use their reasonable best efforts to draft a joint press release with respect to this Agreement, the Transaction Agreements and the transactions contemplated hereby or thereby; provided , however , that if Ventures and Coinstar do not agree on such a joint press release, Ventures and Coinstar shall seek the approval of the other Party before issuing any press release or otherwise making any public statements with respect to this Agreement, the Transaction Agreements or the transactions contemplated hereby or thereby and shall not issue any such press release or make any such public statement prior to such approval (which may not be unreasonably withheld, conditioned or delayed), except as may be required by Law. Prior to making any public disclosure required by applicable Law, each of Ventures and Coinstar shall consult with the other Party as to the content and timing of such public announcement or press release.

SECTION 6.04. Legend . Coinstar agrees to the placement on (a) certificates representing the Interests and (b) any certificate issued at any time in exchange or substitution for any certificate bearing such legend, the legend required by the Redbox LLC Agreement (the " Private Placement Legend "). The Private Placement Legend shall be removed from a certificate representing the Interests if the securities represented thereby are sold pursuant to an effective registration statement under the Securities Act, or there is delivered to Redbox such satisfactory evidence, which may include an opinion of independent counsel, as reasonably may be requested by Redbox, to confirm that neither such legend nor the restrictions on transfer set forth therein are required to ensure that transfers of such securities shall not violate the registration and prospectus delivery requirements of the Securities Act.

SECTION 6.05. No Obligations of the McDonald's System .

(a) McDonald's Corporation and the restaurant system supported by franchisees, suppliers, McDonald's Corporation, McDonald's USA and other related entities (the " McDonald's System ") involve a vast array of activities, assets, relationships, participants and constituents, including the suppliers and owner-operators of McDonald's restaurants.

(b) Except as otherwise provided in the Redbox LLC Agreement and the other Transaction Agreements to which they are parties, Ventures, McDonald's Corporation and McDonald's USA shall have no obligation or fiduciary duty:

(i) to cause any particular business activity of or relating to the McDonald's System to be conducted through Redbox;

(ii) to cause any other strategic investments to be made by such parties through Redbox;

(iii) to conduct any automated vending activities through Redbox;

(iv) to share with Redbox any business opportunity presented to it;

(v) to expand its automated vending activities; or

(vi) to require or encourage other participants in the McDonald's System to participate in or take any action in respect of any activities of Redbox.

(c) It will be left to the sole and absolute discretion of Ventures, McDonald's Corporation and McDonald's USA to decide how it conducts its business activities (subject to the restrictions and obligations noted in Section 6.05(b)), and such decisions may be made by such entity based upon its business judgment, taking into account its overall business interest, the overall best interests of the McDonald's System, and the need to comply with applicable legal requirements, and such entity shall not be accountable to Redbox for the impact of such business decisions upon the Redbox Business. In exercising such discretion, neither Ventures nor any Affiliate of Ventures shall be liable to any Person for claims that Ventures or such Affiliate of Ventures breached a fiduciary duty or any other duty to Redbox or any member of Redbox, including Coinstar, GAM and GARB.

SECTION 6.06. DVDXpress Option .

(a) Subject to the terms of this Section 6.06(a), at any time during the first year after the Closing Date, Ventures shall have the right, in its sole discretion, to cause Redbox to exercise an option to require Coinstar to assign to Redbox all (but not less than all) of Coinstar's rights in respect to the DVDXpress Credit Agreement and the DVDXpress Option (collectively the " DVDXpress Rights "). If Redbox wishes to exercise the option in its favor to acquire the DVDXpress Rights, it shall do so by giving to Coinstar written notice of the exercise of such option at any time within the first year after the Closing Date, and Coinstar shall, no later than ten (10) Business Days after the receipt of such written notice, provide to Redbox a computation of the Closing Option Payment and shall promptly thereafter assign to Redbox the DVDXpress Rights, by means of an assignment agreement reasonably acceptable to the parties. At the closing of such transaction, Redbox shall transfer, in immediately available funds by wire transfer as directed pursuant to instructions delivered by Coinstar to Redbox no later than two (2) Business Days prior to the scheduled closing, all principal, accrued but unpaid interest, and other amounts due and payable to Coinstar by DVDXpress under the DVDXpress Credit Agreement,

including amounts due and payable to Coinstar by DVDXpress from any future financings provided by Coinstar to DVDXpress in accordance with this Section 6.06 after the date hereof but prior to the date Redbox exercises its option to acquire the DVDXpress Rights (the " Closing Option Payment "); provided that any rights Coinstar obtained in such future financings are also assigned to Redbox and constitute part of the DVDXpress Rights. Furthermore, Redbox shall indemnify and hold harmless Coinstar from any and all obligations and Liabilities that may arise under the DVDXpress Rights assigned to Redbox, to the extent that such obligations arise after the assignment of the DVDXpress Rights to Redbox and were not caused by acts or omissions of Coinstar prior to the date of such assignment. Should Redbox choose to exercise the DVDXpress Option, it shall be responsible for all payments in connection therewith and shall pay all such amounts in cash and shall have no right to request or to cause Coinstar to issue any equity securities to pay the Closing Option Payment, even though the DVDXpress Option otherwise permits the use of such equity securities in partial satisfaction of the amounts due to DVDXpress under the DVDXpress Credit Agreement. Coinstar covenants that it will not exercise the DVDXpress Option at any time during the first year after the Closing Date.

(b) If Redbox does not exercise the option granted to it under Section 6.06(a) during the first year after the Closing Date, and as long as Ventures and its Affiliates continue to hold 25% or more of the outstanding Class A Interests, Coinstar shall be subject to the following two limitations that will remain in full force and effect from the one (1) year anniversary of the Closing Date through the three (3) year anniversary of the Closing Date and thereafter lapse:

(i) Ventures shall have the right, in its sole discretion, to cause Redbox to exercise an option to purchase from Coinstar either (A) the DVDXpress Option or (B) if the DVDXpress Option has previously been exercised by Coinstar, the business acquired and operated by Coinstar pursuant to the DVDXpress Option, in either case at the fair market value of such business net (if the DVDXpress Option has not yet been exercised) of the amount of any payment required to exercise the DVDXpress Option (the " DVDXpress Transferred Rights ") determined as of the estimated closing date of the transaction. Redbox may exercise this option by giving written notice thereof to Coinstar at any time after the one (1) year anniversary of the Closing Date but before the three (3) year anniversary of the Closing Date. After written notice of the option has been given, Coinstar and Ventures shall confer in good faith to determine the fair market value of the DVDXpress Transferred Rights and, if they can not reach such agreement within thirty (30) days of commencement of the discussions, the determination of such fair market value shall be established by an independent investment banking firm mutually acceptable to Coinstar and Ventures. If they cannot reach agreement on the identity of such an investment banker within ten (10) days of the commencement of discussions regarding the selection of such independent investment banker, Ventures and Coinstar shall, within five (5) days of the expiration of such ten day period, each select an independent investment banker and the independent investment bankers so selected shall promptly select a third independent banker to be the party responsible for determining the fair market value of the DVDXpress Transferred Rights. Such independent investment banker shall determine the fair market value of the DVDXpress Transferred Rights as soon as is reasonably practicable after its selection, and its determination of value shall be final and binding upon Coinstar and Redbox; provided that Redbox may, in its sole discretion, revoke its exercise of the option to purchase the DVDXpress Transferred Rights within five (5) Business Days of receipt of fair market value of the DVDXpress Transferred Rights (provided that Redbox may not revoke its exercise of such option less than thirty (30) days prior to the expiration of the DVDXpress Option); provided further that if Redbox decides to revoke its exercise of the option to purchase the DVDXpress Transferred Rights pursuant to the foregoing provisio, (x) Ventures shall pay all out-of-pocket costs incurred by either Redbox or Coinstar in connection with the determination of fair market value of the DVDXpress Transferred Rights (including the costs of the independent investment banking firm) and (y) Redbox shall no longer have a right to exercise any option to purchase the DVDXpress Transferred Rights. The sale of the DVDXpress Transferred Rights shall occur no later than sixty (60) days after the later of (1) the determination of their fair market value (whether

such valuation is established through negotiations between Coinstar and Redbox or by an independent investment banking firm) or (2) the receipt of all necessary approvals from any Governmental Entities, and at closing Redbox shall pay to Coinstar the purchase price in full in cash or through the wire transfer of immediately available funds.

(ii) If, at any time between the one (1) year and (3) year anniversaries of the Closing Date, Coinstar wishes to sell its interest in the DVDXpress Option or, if the DVDXpress Option has previously been exercised, the business acquired through Coinstar's exercise of the DVDXpress Option, prior to offering such interest to any third party, Coinstar shall first offer to sell such interest to Redbox, on the terms outlined by Coinstar in a written offer letter (the " DVDXpress Offer Terms "), and Ventures shall have a period of twenty (20) days after the receipt of the DVDXpress Offer Terms to cause, in its sole discretion, Redbox to exercise the right to purchase such assets in accordance with the DVDXpress Offer Terms. If the DVDXpress Offer Terms are accepted within such period, Redbox and Coinstar shall promptly proceed to close the sale in accordance with the DVDXpress Offer Terms. If, on the other hand, Redbox fails to accept in writing, or fails to respond, to the DVDXpress Offer Terms within such twenty (20) day period, Coinstar shall thereafter be free to dispose of such assets to any third party of its choice, at any time within the next twelve (12) months, as long as the transaction is on terms and conditions no more favorable to the purchaser than those set forth in the DVDXpress Offer Terms. Should, however, the DVDXpress Offer Terms be changed in any material respect, making the offer more favorable to the prospective purchaser, the assets to be sold must first be reoffered to Redbox, on the new terms and conditions, in which event Redbox shall have a period of not less than twenty (20) days after the receipt of such revised offer to decide whether or not to accept it. Failure to respond during such period shall be deemed a rejection of the offer.

(c) Nothing in this Section 6.06 or elsewhere in this Agreement shall preclude Coinstar from exercising any of the following rights, and should it do so it will have no Liability to Ventures or any of its Affiliates for taking such actions:

(i) Coinstar may, from and after the date hereof, advance monies to DVDXpress under the DVDXpress Credit Agreement, in accordance with its terms, provided that Coinstar provides sixty (60) days' prior written notice to Redbox and Ventures of any such advance;

(ii) Coinstar may amend, modify or otherwise adjust the terms of the DVDXpress Credit Agreement, without the consent of Redbox, Ventures or any of their respective Affiliates; provided , however , that Coinstar shall provide sixty (60) days' prior written notice to Redbox and Ventures of any such amendment, modification or adjustment; and provided further that any such additional or modified rights shall, for all purposes, be regarded as DVDXpress Rights that Redbox will have an option to acquire under this Section 6.06; and

(iii) Neither Coinstar nor any Affiliate thereof shall, without the prior written consent of Redbox, enter into any agreement to: (A) provide field services to DVDXpress during the first year after the Closing Date, (B) provide marketing services to DVDXpress for a period of two years after the Closing Date, and (C) provide any other material services to

DVDXpress to support its business activities, pursuant to formal business arrangements, for a period of two years after the Closing Date; provided, however, that nothing contained in this Section 6.06(d)(iii) is intended to preclude Coinstar from conferring with, and giving advice to DVDXpress, for purposes of protecting its interest in DVDXpress, whether such interest is as a creditor and/or equity holder. Furthermore, if, after the one (1) year period set forth in clause (A) above and until the two (2) year anniversary of the Closing Date, Coinstar provides any field services to DVDXpress, Coinstar agrees to make such services available to Redbox on similar terms (if and to the extent feasible) if so requested by Redbox, except if Coinstar exercises the DVDXpress Option, at which point this sentence will be null and void.

(iv) The restrictions set forth in this Section 6.06(c) shall lapse at such time as Ventures ceases to hold at least a twenty-five percent (25%) of the outstanding Class A Interests in the Company.

(d) Notwithstanding anything in this Section 6.06 to the contrary, Coinstar may take, at any time, such actions as it considers necessary, advisable, or appropriate to protect the DVDXpress Rights (as such rights might be subsequently amended or modified) to ensure the enforceability of the DVDXpress Rights, to collect amounts that may be due and owing to Coinstar, and to preserve its rights under the DVDXpress Credit Agreement, whether or not such actions seem appropriate or advisable to Redbox, Ventures or their respective Affiliates.

(e) Notwithstanding anything in this Section 6.06 to the contrary, Coinstar shall not be restricted from exercising any rights as a creditor that it may have under the DVDXpress Credit Agreement if DVDXpress should breach or otherwise be in default under the terms thereunder.

(f) If, at any time, Ventures wishes to cause Redbox to exercise the rights granted to it under this Section 6.06, Ventures shall so advise Coinstar, and Coinstar shall cause its representatives on the Redbox Board of Managers to vote in favor of such action, including to (i) exercise the option to acquire the DVDXpress Rights set forth in Section 6.06(a), (ii) consummate the acquisition of DVDXpress or DVDXpress' assets pursuant to the DVDXpress Option, and (iii) accept Coinstar's offer of providing services to Redbox pursuant to section 6.06(c).

SECTION 6.07. Coinstar Option .

(a) Ventures grants to Coinstar a one-time option (the " Coinstar Option ") to purchase that portion of the Class A Interests owned by Ventures sufficient to bring Coinstar's ownership interest of Class A Interests up to fifty-one percent (51%) of the outstanding Class A Interests. The purchase price of any Class A Interests purchased by Coinstar (the " Transferred Class A Interests ") shall be based on a valuation of all of the Class A Interests of Redbox equal to $138,000,000. In addition, Ventures shall be entitled to receive when distributed by Redbox any accrued but unpaid Percentage Preferred Returns (as defined in the Redbox LLC Agreement) owing on the Transferred Class A Interests to the extent that such Percentage Preferred Returns have accrued on such interest as of the transfer date but are not distributed by Redbox until after such transfer date. Coinstar shall be entitled to receive all distributions in respect to the Percentage Preferred Returns on the Transferred Class A Interest that accrue after the transfer date. Furthermore, Redbox, Coinstar and Ventures agree that, in the event Class A Interests are transferred to Coinstar under the Coinstar Option, Redbox shall distribute directly to Ventures its share of accrued but unpaid Percentage Preferred Returns on the Transferred Class A Interests before distributing to Coinstar its share of the accrued but unpaid Percentage Preferred Returns on the Transferred Class A Interests, and Redbox will receive instructions to such effect in the event of a transfer. Coinstar will have no liability for Redbox's obligation to distribute to Ventures its shares of any accrued but unpaid Percentage

Preferred Returns on the Transferred Class A Interests, and Ventures will look solely to Redbox for such payments; provided , however , that if Redbox pays to Coinstar such Percentage Preferred Returns accruing on the Transferred Class A Interests after the date of sale that should have been paid to Ventures, Coinstar agrees to remit such Percentage Preferred Returns to Ventures. Coinstar may exercise this option at any time between the two-year anniversary and the three-year anniversary of the Closing Date (the " Option Period ") as long as written notice of Coinstar's election to exercise such option is given within the Option Period. The closing of such transaction shall occur no later than twenty (20) Business Days after such written notice is given, and at the closing (i) Coinstar shall transfer, in immediately available funds by wire transfer as directed pursuant to instructions delivered by Ventures to Coinstar no later than two (2) Business Days prior to the scheduled closing, the amount of the purchase price set forth above, (ii) Ventures shall transfer its right, title and interest to such Transferred Class A Interests free and clear of all Liens, and (iii) Ventures and Coinstar shall cooperate to effectuate such transfer in accordance with the terms of the Redbox LLC Agreement. For the sake of clarity, if Coinstar exercises the Coinstar Option and purchases that portion of the Class A Interests owned by Ventures sufficient to bring the percent of Class A Interests owned by Coinstar to fifty-one percent (51%) of the outstanding Class A Interests, thereafter Ventures or Coinstar, as the case may be, may trigger the buy-sell provisions of Section 8.06 of the Redbox LLC Agreement.

(b) If Coinstar becomes the holder of fifty-one percent (51%) or more of the outstanding Class A Interests as a result of the exercise of the Coinstar Option, Redbox's Board of Managers will automatically expand from four to five members, and Coinstar shall have the right to appoint three of those members, and Ventures shall have the right to appoint two of those members, in each case as provided in Section 6.01(d) of the Redbox LLC Agreement.

(c) Any Person (other than Coinstar), including any Affiliate of Ventures, that acquires Ventures' Class A Interests in Redbox shall hold such Class A Interests subject to the Coinstar Option.

SECTION 6.08. Redbox Agreements . Each of Ventures and Coinstar shall use their reasonable best efforts to cause Redbox to comply, in all material respects, with the terms of the Transaction Agreements and the Share Purchase Agreement.

ARTICLE VII

MISCELLANEOUS

SECTION 7.01. Fees and Expenses . Each of the Parties shall bear its own costs and expenses (including fees and disbursements of its counsel, accountants and other experts) incurred by it in connection with the preparation, negotiation, execution, delivery and performance of the Transaction Agreements, each of the other documents and instruments executed in connection with or contemplated thereby and the consummation of the transactions contemplated thereby.

SECTION 7.02. Survival of Representations, Warranties, Covenants and Agreements . Each representation or warranty in this Agreement shall survive the Closing until

the two-year anniversary of the Closing Date; provided , however , that each representation and warranty made in Section 3.09(d) shall survive the Closing Date until and including June 1, 2009, each representation and warranty made in Sections 3.01, 3.02, 3.03(b)(i), 3.04, 4.01, 4.02, 4.03(b)(i), 5.01, 5.02 and 5.03(b)(i) shall survive indefinitely, and each representation and warranty made in Section 3.13 and Section 3.17 shall survive until sixty (60) days after termination of the applicable statute of limitations period. The covenants or agreements contained in Article VI shall survive the Closing until the date on which the covenant or agreement has been performed in full. Any claim for indemnification under this Article VII arising out of the inaccuracy or breach of any representation, warranty, covenant or agreement must be made prior to the end of the period for which such representation, warranty, covenant or agreement survives, as set forth in this Section 7.02.

SECTION 7.03. Indemnification .

(a) Ventures hereby agrees to indemnify and hold harmless Coinstar and its officers and directors (collectively, the " Indemnified Coinstar Parties ") against any and all losses, penalties, judgments, suits or Liabilities (less the proceeds of any insurance collectible but including reasonable attorneys' fees and disbursements) (collectively, " Losses "), and each such Indemnified Coinstar Party shall have no liability to any of Redbox, Ventures, GAM or their respective Affiliates, managers, directors, officers, agents, employees, owners, creditors or security holders for any Losses incurred by, imposed upon or asserted against any of the Indemnified Coinstar Parties as a result of, relating to, arising out of or based upon (i) the breach of any representation or warranty made in Articles III or IV of this Agreement (each of which shall be deemed to have been made for the benefit of Coinstar); (ii) the breach of any agreement or covenant made by Ventures in this Agreement (each of which shall be deemed to have been made for the benefit of Coinstar); or (iii) Taxes imposed on Redbox in respect of its income, business, property or operations, or for which Redbox may otherwise be liable, in each case for any taxable period or portion thereof ending prior to or on the Closing Date; provided , however , that the Indemnified Coinstar Parties shall not be indemnified from and against any Losses pursuant to this Section 7.03(a) to the extent that the Indemnified Coinstar Parties have been indemnified from and against any Losses pursuant to Section 7.03(a) that in the aggregate exceed the amount of the Total Cash Consideration. For purposes of this Section 7.03(a), with respect to any taxable period that begins on or before the Closing Date and ends after the Closing Date, Taxes shall be allocated between the two portions of the taxable period based on a closing of the books method, except that Taxes imposed on a per diem basis shall be allocated based on the number of days in each portion.

(b) Coinstar hereby agrees to indemnify and hold harmless Redbox, Ventures, each of their respective Affiliates and each of their respective officers and directors (collectively, the " Indemnified Redbox Parties ") against any and all Losses, and each such Indemnified Redbox Party shall have no liability to Coinstar or its directors, officers, owners, members, agents, employees, creditors or security holders for any Losses, arising out of or based upon the breach of any representation or warranty, agreement or covenant made by Coinstar in this Agreement.

(c) Promptly after receipt by an indemnified party under this Section 7.03 of notice of any pending or threatened Proceeding in respect of which indemnification may be sought hereunder (a " Claim "), such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under this Section 7.03, notify the indemnifying party in writing of such Claim within thirty (30) days of the date of such Claim; provided that the failure to so notify the indemnifying party shall not relieve it of any liability that it may have to any indemnified party hereunder, except to the extent that the indemnifying party is prejudiced thereby. To the extent that the Claim relates to a third-party claim, the indemnifying party shall assume the defense of any such Claim. The indemnifying party shall employ counsel of its choice, and the indemnifying party shall bear the reasonable fees, costs and expenses of such counsel. It is understood, however, that except if the use of one counsel to represent the indemnified parties would present such counsel with a conflict of interest, the indemnifying party shall, in connection with any one such action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the reasonable fees and expenses of only one separate firm of attorneys (in addition to any local counsel) at any time for all such indemnified parties. Any indemnifying party may, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any Claim as long as such settlement, compromise or consent (i) provides for monetary damages that are paid in full by the indemnifying party or includes the release of each indemnified party from all liability arising out of such Claim, and (ii) there is no finding or admission or any violation of Law or any violation of the rights of any Person and there is no effect on any other Claims that may be made against the indemnified parties. Otherwise, any settlement, compromise or consent to any Claim requires the prior written consent (which consent shall not be unreasonably withheld, delayed or conditioned) of the indemnified parties.

(d) No indemnified party seeking indemnification under this Agreement shall, without the indemnifying party's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed), settle, compromise or consent to the entry of any judgment in any Claim.

(e) Except for claims based on fraud, the indemnification rights contained in this Section 7.03 shall be the sole and exclusive remedy in respect of claims made after the Closing with respect to all Losses arising out of or relating to this Agreement and no other remedies shall be available (including for any breaches of representations, warranties, covenants and agreements contained in this Agreement).

(f) Without limiting any other right to remedies hereunder, any of the Parties to whom payments under this Section 7.03 are owed shall have the right in its sole discretion to recover Losses by directing Redbox to pay to the indemnified party any amounts Redbox owes to the indemnifying party or its Affiliates pursuant to the Redbox LLC Agreement or any other agreement between Redbox and any of the indemnifying party or its Affiliates to satisfy the obligations of the indemnifying parties hereunder.

(g) All payments under this Section 7.03 shall be treated as an adjustment to the purchase price for all applicable Tax, except as may be otherwise required by Law.

(h) Notwithstanding the aforementioned, no party shall be indemnified from and against any Losses pursuant to Section 7.03 of this Agreement until either of the following tests (whichever occurs first) is satisfied: (i) the aggregate amount of the $37,500 Loss Claims equals or exceeds $500,000 or (ii) the aggregate amount of all Losses (irrespective of whether they constitute $37,500 Loss Claims) equals or exceeds $1,000,000 (in either case, the " Threshold Amount "). If either of the Threshold Amounts is exceeded, the indemnifying party is required to pay the amount of all Losses sustained by the indemnified parties and not just Losses in excess of the applicable Threshold Amount. For purposes of this paragraph, " $37,500 Loss Claims " means, with respect to any indemnified party, any Claim brought by such indemnified party for indemnification under this Agreement that involves Losses equal to or in excess of $37,500; provided , however , that (i) where a number of Claims arise out of the same facts, events or circumstances, or (ii) where a number of Claims arise out of the same subject matter and the Claims are attributable to more than sporadic and totally unrelated instances of noncompliance (for example, where the breaching Party is guilty of a pattern of non-compliance, such as failing to get a number of the permits from Governmental Entities required to conduct business in the manner then conducted), such Claims shall be considered a single "Claim" and all Losses related thereto shall be aggregated.

(i) If Coinstar brings a Claim against Ventures for breach of Section 3.09 of this Agreement and Ventures has received or does receive indemnification (including any payments, property or Class A Interests) for a breach of Section 4.08 of the Share Purchase Agreement, dated as of July 1, 2005, among Ventures, the Company, GAM, GARB and the former GAM shareholders (the " Share Purchase Agreement "), from GAM, GARB and the former GAM shareholders pursuant to the terms of the Share Purchase Agreement or the LLC Interest Pledge Agreement, dated as of July 1, 2005, by and between Ventures and GARB, arising out of the same facts and circumstances as Coinstar's Claim against Ventures (and if the Threshold Amount set forth in Section 7.03(h) has been exceeded), Ventures shall remit to Coinstar the percentage of such recovery equal to the number of Class A Interests owned by Coinstar divided by the number of Class A Interests owned by Ventures and Coinstar (the " Pro Rata Share ") less the Pro Rata Share of all reasonable out-of-pocket expenses incurred by Ventures in pursuing such recovery (provided that such remittance shall not exceed the amount of such Claim brought by Coinstar against Ventures). Any recovery under the Share Purchase Agreement that is transferred to Coinstar pursuant to this Section 7.03(i) shall reduce the value of the Claim brought by Coinstar against Ventures in an amount equal to the value of such recovery and shall be included when calculating the maximum value of Losses for which Coinstar may seek indemnification under Section 7.03(a). The rights reserved to Coinstar in this Section 7.03(i) shall not, however, preclude or restrict Coinstar from actively pursuing Claims against Ventures for, and recovering its Losses as a result of, the breach of Section 3.09. Furthermore, if Coinstar has recovered all amounts to which it is entitled under this Agreement for Losses resulting from such breaches, and subsequent to that date, Ventures receives a recovery under the Share Purchase Agreement, Coinstar shall not participate in such recovery, provided , however , that if the recovery includes the receipt of Class A Interests, Coinstar may elect, by giving notice to Ventures, to receive its Pro Rata Share of such Class A Interests in exchange for payment to Ventures of the fair value of such Class A Interests, computed as of the

date that such Class A Interests are transferred to Coinstar. Such fair value shall be established through good faith negotiations between Coinstar and Ventures.

(j) If Coinstar brings a Claim against Ventures for breach of any representation or warranty contained in Section 3.09, Ventures shall have the right, at its sole option, to resolve any such Claim caused by such breach in any manner whatsoever, including by challenging the validity of the Intellectual Property rights of any Person or causing Redbox to enter into a license agreement with any Person for any Intellectual Property rights or to design around the Intellectual Property rights of any Person; provided that if any such action taken imposes any Liabilities upon, or results in the incurrence of any expenses by, Redbox, Ventures shall reimburse Redbox for such Liabilities. If approval of the Redbox Board of Managers is required to undertake any such actions, Coinstar shall cause any representatives on the Redbox Board of Managers appointed by Coinstar to vote in favor of any actions approved by the representatives on the Redbox Board of Managers appointed by Ventures.

SECTION 7.04. Notices . All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given, if delivered personally, by facsimile or sent by first class mail, postage prepaid, as follows:

(i) If to Redbox, to:

Redbox Automated Retail, LLC
One Tower Lane, Suite 1200
Oakbrook Terrace, Illinois 60181
Attention: Gregg Kaplan
Facsimile: (630) 756-8888

(ii) If to Ventures, to:

McDonald's Ventures, LLC
1 Parkview Plaza, Suite 640
Oakbrook Terrace, Illinois 60181
Attention: Chris Catalano, Vice President and Chief Investment Officer
Facsimile: (630) 623-4014

With copies to:

McDonald's Ventures, LLC
2915 Jorie Boulevard, Dept. #060
Oak Brook, Illinois 60523
Attention: Cathy Griffin, Vice President, General Counsel and Secretary
Facsimile: (630) 623-8154

and

Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, New York 10006
Attention: Janet Fisher, Esq.
Facsimile: (212) 225-3999

(iii) If to Coinstar, to:

Coinstar, Inc.
1800 114 th Ave. SE
P.O. Box 91258
Bellevue, WA 98009-9258
Attention: Peter Rowan
Facsimile: (425) 943-8030

With copies to:

Coinstar, Inc.
1800 114th Ave. SE
P.O. Box 91258
Bellevue, WA 98009-9258
Attention: Chief Financial Officer
Facsimile: (425) 943-8030

Coinstar, Inc.
1800 114th Ave. SE
P.O. Box 91258
Bellevue, WA 98009-9258
Attention: General Counsel
Facsimile: (425) 943-8030

and

Perkins Coie, LLP
1201 Third Avenue, 48 th Floor
Seattle, WA 98101-3099
Attention: George M. Beal, Esq.
Facsimile: (206) 359-9519

All notices shall be effective when received.

SECTION 7.05. Entire Agreement; Amendment . This Agreement and the other Transaction Agreements set forth the entire agreement among the Parties and any of their

Affiliates with respect to the transactions contemplated by this Agreement and supersedes the letter agreement, dated July 25, 2005, between Redbox, Ventures and Coinstar, which is terminated in its entirety hereby. Any provision of this Agreement may only be amended, modified or supplemented in whole or in part at any time by an agreement in writing among the Parties. No failure on the part of any Party to exercise, and no delay in exercising, any right shall operate as a waiver thereof, nor shall any single or partial exercise by either Party of any right preclude any other or future exercise thereof or the exercise of any other right.

SECTION 7.06. Counterparts . This Agreement may be executed in two or more counterparts, each of which shall be deemed to constitute an original, but all of which together shall constitute one and the same document.

SECTION 7.07. Governing Law; Venue; Service of Process; Waiver of Jury Trial . This Agreement shall be governed by, and interpreted in accordance with, the Laws of the State of Delaware applicable to contracts made and to be performed in that State without reference to its conflict of laws rules. Any Proceeding seeking to enforce any provision of, or based on any rights arising out of, this Agreement may only be brought against any of the parties in the courts of the State of Delaware, or, if it has or can acquire jurisdiction, in the United States District Court for Delaware, and each of the Parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such Proceeding and waives any objection to venue laid therein. Each of the Parties irrevocably consents to the service of process in any Proceeding hereunder by the mailing of copies thereof by registered or certified airmail, postage prepaid, to the address specified in Section 7.04. The foregoing shall not limit the rights of any Party to serve process in any other manner permitted by applicable Law or to obtain execution of judgment in any other jurisdiction. The Parties agree to waive any and all rights that they may have to a jury trial with respect to disputes arising out of this Agreement.

SECTION 7.08. Successors and Assigns . Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, each Party's successors and assigns. Neither this Agreement nor any rights hereunder shall be assignable by any Party without the prior written consent of the other Parties.

SECTION 7.09. No Third-Party Beneficiaries . This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement, except that the provisions of Section 7.03 shall inure to the benefit of and be enforceable by each Indemnified Coinstar Party and Indemnified Redbox Party.

SECTION 7.10. Transfer and Other Taxes . All transfer, documentary, sales, use, stamp, registration and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement, if any, shall be borne by Redbox when due, and Redbox shall (a) file all necessary Tax Returns and other documentation with respect to any such transfer, documentary, sales, use, stamp, registration and other Taxes and fees and (b) provide Ventures and Coinstar with a duly certified or authenticated copy of an original receipt for the payment of each such Tax or fee and of each such Tax Return or other document filed.

SECTION 7.11. Severability. In case any one or more of the provisions contained in this Agreement is adjudged to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, except to the extent necessary to avoid an unjust or inequitable result.

IN WITNESS WHEREOF, this Agreement has been executed by each Party or on behalf of each Party by its respective duly authorized officer, all as of the date first above written.

REDBOX AUTOMATED RETAIL, LLC

By: /s/ Chris Catalano
Name: Chris Catalano
Title: Vice President and Chief Investment Officer

MCDONALD'S VENTURES, LLC

By: /s/ Chris Catalano
Name: Chris Catalano
Title: Vice President and Chief Investment Officer

COINSTAR, INC.

By: /s/ David W. Cole
Name: David W. Cole
Title: Chief Executive Officer

MEDIA CONTACTS:

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Coinstar, Inc.
(425) 943-8277
mmaule@coinstar.com

Lisa Howard
McDonald's Corporation
630-623-5044
lisa.howard@mcd.com

FOR IMMEDIATE RELEASE

COINSTAR AND MCDONALD'S VENTURES TO DELIVER MARKET-LEADING DVD RENTAL KIOSKS

Coinstar To Enter High Growth DVD Market With $20 Million Redbox Investment

BELLEVUE, Wash. – Nov. 17, 2005 – Coinstar, Inc. (NASDAQ: CSTR) today announced an agreement with McDonald's Ventures, LLC, a wholly-owned subsidiary of McDonald's Corporation (NYSE: MCD), to invest in Redbox Automated Retail, LLC. Coinstar will invest $20 million in cash and will own a 47.3 percent share in Redbox. Redbox is the leading renter of DVDs through self-service kiosks with about 800 locations in the United States, including McDonald's restaurants and supermarket locations. The Redbox business has been in operation since 2002 and currently is a majority-owned subsidiary of McDonald's Ventures, LLC.

Redbox has more than three years of planning, customer testing, refinement and in-market operations experience. Redbox is capitalizing on the growth of the home video market that is expected to reach $42 billion by 2014 and the DVD self-service kiosk market segment with growth potential in excess of $3 billion by 2009.

Current U.S. locations where the Redbox service is available have delivered strong results with over three million DVDs rented over the last five months. Consumers have enthusiastically embraced the $1 per night price point, convenient return options and easy self-service operation of the kiosk.

"We are very excited about teaming up with McDonald's Ventures on this business," said Peter Rowan, vice president of new business innovation at Coinstar, Inc. "Redbox is a proven product that has already gained consumer and retailer acceptance in the United States. Further, Redbox is a great addition to our 4 th Wall™ product portfolio that helps retailers increase traffic and profit at the front of their stores -- with no labor or cost requirements."

"Customers tell us they like having movies on our menu," said Chris Catalano, chief investment officer of McDonald's Ventures, LLC. "Partnering with Coinstar is an exciting next step that will enable the expansion of Redbox to more locations. Coinstar has had tremendous success building a complex network of self service kiosks. They understand the complexities and nuances of this business, and have excelled in delivering high profit per square foot services to retail customers."

Today, Redbox is available in select McDonald's restaurants and supermarkets across the country (a complete list of locations is available at www.redbox.com). Coinstar, Inc. will now serve as the exclusive sales agent for Redbox in the U.S. for supermarkets, mass merchandisers, drug stores and wholesale clubs.

Coinstar expects to invest $20 million in cash at the close of the transaction and another $12 million after one year if certain growth objectives are achieved. After the second year, Coinstar has a 12-month option to obtain additional shares acquiring a majority voting interest in the business. This transaction is expected to close in the next 30 days. Closing the transaction is contingent upon certain customary conditions including securing certain contractual consents.

Redbox Automated Retail, LLC, will continue to operate independently out of its headquarters in Oakbrook Terrace, Ill. The company will be managed by a four-person board of directors in which two positions will be appointed by Coinstar, Inc. and two will be appointed by McDonald's Ventures, LLC.

Conference Call

Coinstar, Inc. announced that a conference call to discuss the proposed investment in Redbox Automated Retail, LLC will be broadcast live over the Internet today, Thursday, November 17, 2005, at 4:30 p.m. Eastern Time. The Webcast will be hosted at the "About Us – Investor Relations" section of Coinstar's Web site at www.coinstar.com.

About Coinstar, Inc.

Coinstar, Inc. (Nasdaq: CSTR) is a multi-national company offering a range of 4 th Wall™ solutions for the retailers' front of store consisting of self-service coin counting, electronic payment solutions, and entertainment services. The company's products and services can be found at more than 57,000 retail locations including supermarkets, drug stores, mass merchants, convenience stores, and restaurants. For more information, visit www.coinstar.com.

About McDonald's Ventures, LLC

McDonald's Ventures, LLC is a wholly-owned subsidiary of McDonald's Corporation. McDonald's Ventures manages the investments McDonald's holds in future oriented growth initiatives including Chipotle, Boston Market, Redbox and Pret A Manger.

# # #

This press release contains forward-looking statements relating to Coinstar, Inc.'s anticipated growth and future operating results that involve a number of risks and uncertainties. These are forward-looking statements for purposes of the safe harbor provisions under the Private Securities Litigation Reform Act of 1995. The words "believe," "expect," "intend," "anticipate," "goals," variations of such words, and similar expressions identify forward-looking statements, but their absence does not mean that the statement is not forward-looking. The forward-looking statements are not guarantees of future performance and actual results may vary materially from the results expressed or implied in such statements. Differences may result from actions taken by Coinstar, Inc., as well as from risks and uncertainties beyond Coinstar, Inc.'s control. Factors that could cause or contribute to such differences include, but are not limited to, the effect of the purchase of interest in Redbox Automated Retail, LLC, the ability to bring new and repeat customers to Coinstar® machines, the ability to obtain new agreements with potential retail partners for the installation of Coinstar units and the retention of the current agreements with our existing retail partners on terms that are not materially adverse to the company, additional potential competitors, legal or governmental regulatory action and uncertainties relating to the ultimate success of new business initiatives (including prepaid services), including but not limited to the ability to attract customers and reach agreements with retail and other partners. The foregoing list of risks and uncertainties is illustrative, but by no means exhaustive. For more information on factors that may affect future performance, please review the most recent reports filed with the Securities and Exchange Commission by Coinstar, Inc. These forward-looking statements reflect Coinstar, Inc.'s expectations as of November 17, 2005. Coinstar, Inc. undertakes no obligation to update the information provided herein.

EXHIBIT E

TO THE
§1.132 DECLARATION OF JENS HORSTMANN

U.S. Serial No. 09/903,441

AMonline.com: Printable Article

Updated: November 27th, 2006 12:55 PM PDT

Redbox Signs Five More Supermarkets For Its Automated DVD Rental Machines

Automated DVD vending kiosk provider Redbox has agreed to install its units in stores operated by Albertsons LLC, Chevy Chase, Hannaford Supermarkets, Martin's, and Strack N Van Til, according to Progressive Grocer, a supermarket trade magazine.

Click here for the full story.

Editor's Insight: The Redbox machine has been a big hit with retailers. These DVD rental machines and other self serve kiosks will make the general public more familiar with cashless vending, which will create new growth opportunities for the full line vending industry.

Vending operators need to invest in more card readers in order to take advantage of changing consumer habits. Cashless vending installations are moving at a snail's pace.

The recent National Automatic Merchandising Association National Expo in Orlando, Fla. included a keynote presentation on a consumer survey about perceptions of vending. A key finding is that consumers are generally unaware of technological improvements in vending. Another important finding is that a larger percentage of consumers will use credit cards to pay for vending purchases if given the opportunity.
11-27-06 by Elliot Maras

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redbox

automated dvd rental

REDBOX™ SURPASSES 38 MILLION RENTALS AND 2,900 LOCATIONS, BECOMES FIFTH LARGEST DVD RENTAL COMPANY NATIONWIDE

Redbox *Installs More Than 400 Locations in March*

For Immediate Release: April 11, 2007

Oakbrook Terrace, Ill. – *Redbox*, the nation's leader in kiosk-based DVD rental, recently surpassed 38 million rentals and 2,900 locations nationwide. Launching only 12 locations in 2003, *redbox* now joins the top five elite DVD rental companies in the country*. Offering an unmatched $1 per night price point, online rentals and convenient rent-and-return anywhere policy, *redbox* continues to experience unprecedented industry growth. During the month of April 2007, *redbox* will install more than 700 new locations, including select grocery stores nationwide and additional McDonald's® restaurants.

"We are extremely proud to join the nation's top five DVD renters and reinforce our leadership position in the automated DVD rental category," said Gregg Kaplan, chief executive officer, *redbox*. "*Redbox*'s proven technology and unmatched production timeline have allowed us to expand at an incredible rate and introduce more consumers to the *redbox* experience." By the end of June 2007, *redbox* will have doubled its January 1, 2007 market presence to more than 4,000 locations nationwide.

Bo Anderson, President of the Entertainment Merchants Association, welcomes *redbox* among the industry leaders. "The Entertainment Merchants Association is proud to have *redbox* as an active member, and congratulates them on growing to a market position among the top five U.S. rental specialists," said Anderson.

In addition to *redbox*'s expanding grocery footprint, including recent agreements with SUPERVALU and Albertson's LLC, *redbox* is now appearing in select new McDonald's markets throughout the United States. In March 2007, *redbox* premiered in nearly 200 McDonald's restaurants throughout Colorado Springs, Colo., Jacksonville, Fla., Oklahoma City and San Antonio. By June 2007, *redbox* also will appear in select McDonald's restaurants throughout Austin, Texas, Eugene, Ore., Indianapolis, Kansas City, Mo., Louisville, Ky., Nashville, Tenn. and Portland, Ore. *Redbox*'s rapid expansion has strengthened the company's leadership position in all sectors of the DVD rental kiosk industry, including supermarkets, grocery stores and restaurants.

Each fully automated *redbox* kiosk holds more than 500 DVDs, representing over 70 of the newest movie releases, with new titles available every Tuesday. Consumers simply use a touch screen to select their favorite movies, swipe a valid credit or debit card and go. Customers can keep the DVD for as long as they'd like for $1 per night plus tax.

- more -

After 25 nights, rental charges cease and the DVD is the customer's to keep. For added convenience, customers can visit www.redbox.com to choose their favorite title online and pick it up immediately at the *redbox* location of their choice. The value and convenience of *redbox* have attracted more than 5 million unique customers to date.

About *Redbox*

Redbox Automated Retail, LLC is the nation's leader in automated DVD rental services. *Redbox* continues to revolutionize the DVD rental industry with kiosks featured in the nation's leading grocery stores, select McDonald's restaurants and other locations nationwide. In September 2006, *redbox* launched online rentals – offering guaranteed and immediate access to new release titles with no membership or mailman required. *Redbox* Automated Retail, LLC is owned by Coinstar, Inc., McDonald's Ventures, LLC, a wholly-owned subsidiary of McDonald's Corporation, and private investors. More information about *redbox* can be found at www.redbox.com.

###

***Redbox* Media Contact:**
Kristin Zanini, JSH&A Public Relations, +1 (630) 932 9316 (U.S.)

*Source: Entertainment Merchants Association

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redbox

June 25, 2007 10:05 AM Eastern Daylight Time

Redbox™ Surpasses 4,000 Locations Nationwide, Strengthens Industry Leadership Position

Redbox *Leads DVD Rental Kiosk Industry in Both the Grocery and Restaurant Channels*

OAKBROOK TERRACE, Ill.--(BUSINESS WIRE)--*Redbox*, the nation's leader in automated DVD rental, recently surpassed 4,000 locations nationwide, reinforcing the company's dominance in both grocery and restaurant locations. Featuring fully automated DVD rental kiosks in more than 2,600 grocery stores nationwide, *redbox* now offers approximately 30 percent more grocery locations than its closest competitor. With kiosks also available in more than 1,400 McDonald's restaurants, *redbox* has doubled its January 1, 2007 market presence.

Redbox is now among the top four DVD rental companies in the country by revenue, including kiosk providers, brick-and-mortar retailers and subscription-based companies.

"As consumers continue to embrace *redbox*'s unmatched value and convenience, we expect our growth to continue at this aggressive pace through 2007 and beyond," said Gregg Kaplan, chief executive officer, *redbox*.

Each fully automated *redbox* kiosk holds more than 500 DVDs, representing 90-100 of the newest movie releases, with new titles available every Tuesday. Consumers simply use a touch screen to select their favorite movies, swipe a valid credit or debit card and go. Customers can keep the DVD for as long as they'd like for $1 per night plus tax. After 25 nights, rental charges cease and the DVD is the customer's to keep. For added convenience, customers can visit www.redbox.com to choose their favorite title online and pick it up immediately at the *redbox* location of their choice.

About *Redbox*

Redbox Automated Retail, LLC is the nation's leader in automated DVD rental services. *Redbox* continues to revolutionize the DVD rental industry with kiosks featured in the nation's leading grocery stores, select McDonald's restaurants and other locations nationwide. In September 2006, *redbox* launched online rentals – offering guaranteed and immediate access to new release titles with no membership or mailman required. *Redbox* Automated Retail, LLC is owned by Coinstar, Inc., McDonald's Ventures, LLC, a wholly-owned subsidiary of McDonald's Corporation, and private investors. More information about *redbox* can be found at www.redbox.com.

###

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July 31, 2007 10:00 AM Eastern Daylight Time

Entertainment Merchants Association Names *Redbox,* DVD Rental Kiosk Provider, "Specialist Retailer of the Year"

Quick, Convenient and Expanding, Redbox *Surpasses 50 Million DVD Rentals*

Home Media Expo 2007

OAKBROOK TERRACE, Ill.--(BUSINESS WIRE)--*Redbox*, the nation's leader in kiosk-based DVD rental, was named the "2007 Specialist Retailer of the Year" by the Entertainment Merchants Association (EMA) at the 2007 Home Media Expo held recently in Las Vegas. The EMA's Retailer of the Year honor recognizes outstanding contributions and performance in the DVD and video game industries. This marks the first time an automated retailer received the coveted Retailer of the Year honor.

"*Redbox* has leveraged the latest technology to deliver a convenient, customer-focused DVD retail experience," said Bo Andersen, President, EMA. "In just 18 square feet of retail space, *redbox* maximizes the consumer experience and we are proud to honor *redbox* with the '2007 Specialist Retailer of the Year' award." The award was accepted by Gregg Kaplan, chief executive officer, *redbox*, and Mitch Lowe, chief operating officer, *redbox*.

"We are extremely proud to accept this award and reinforce our leadership position in the DVD rental industry," said Gregg Kaplan, chief executive officer, *redbox*. "*Redbox*'s proven technology and unmatched value and convenience have allowed us to expand at an incredible rate and introduce more consumers to the *redbox* experience." By the end of August 2007, *redbox*'s market presence will exceed 4,800 locations nationwide.

The EMA award presentation followed *redbox*'s renting of its 50 millionth DVD. This milestone was achieved on July 4, 2007 with the rental of "Bridge to Terabithia" at a *redbox* location in Conroe, Texas. Offering an unmatched $1 per night price point, online rentals and convenient rent-and-return anywhere policy, *redbox* continues to expand its consumer base and market presence. During the month of August 2007, *redbox* will install more than 470 new kiosks, at select grocery and drug retailers and McDonald's restaurants.

Each fully automated *redbox* kiosk holds more than 500 DVDs, representing 70-100 of the newest movie releases, with new titles available every Tuesday. Consumers simply use a touch screen to select their favorite movies, swipe a valid credit or debit card and go. Customers can keep the DVD for as long as they'd like for $1 per night plus tax. After 25 nights, rental charges cease and the DVD is the customer's to keep. For added convenience, customers can visit www.redbox.com to choose their favorite title online and pick it up immediately at the *redbox* location of their choice. The value and convenience of *redbox* have attracted more than 7 million unique customers to date.

About Entertainment Merchants Association

The Entertainment Merchants Association (EMA) is the not-for-profit international trade association

dedicated to advancing the interests of the $33 billion home entertainment industry. EMA represents approximately 600 companies throughout the United States, Canada, and other nations. Its members operate approximately 20,000 retail outlets in the U.S. that sell and/or rent DVDs and computer and console video games and digitally distributed versions of these products. Membership comprises the full spectrum of retailers (from single-store specialists to multi-line mass merchants, and both brick and mortar and online stores), distributors, the home video divisions of major and independent motion picture studios, and other related businesses that constitute and support the home entertainment industry. EMA was established in April 2006 through the merger of the Video Software Dealers Association (VSDA) and the Interactive Entertainment Merchants Association (IEMA).

About *Redbox*

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Contacts

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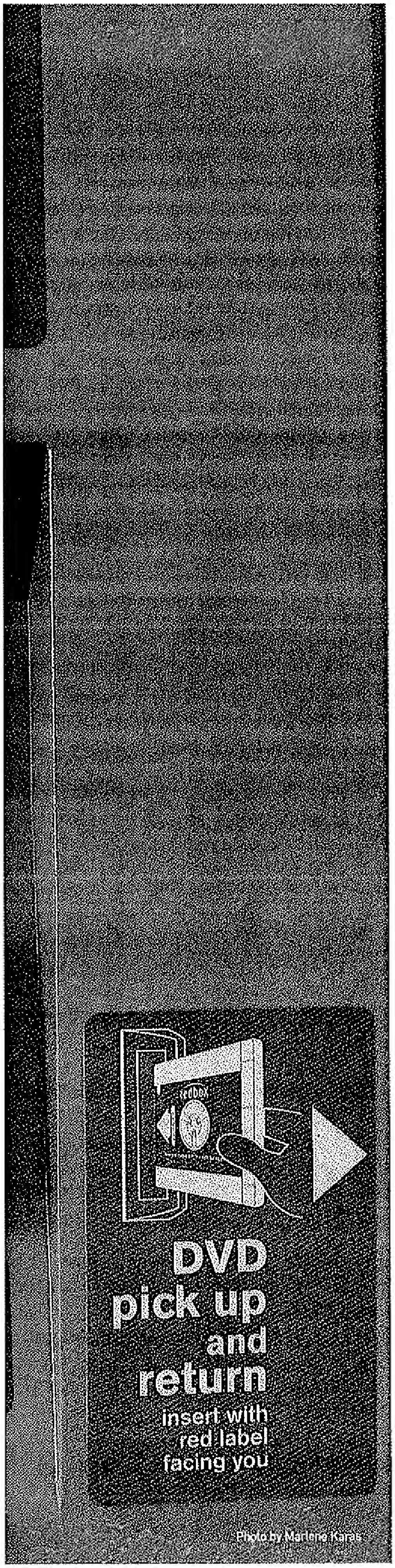

Photo by Marlene Karas

RISE OF REDBOX

The increasingly familiar DVD kiosk is helping change how people rent digital media

BILL YACKEY

FOR MCDONALD'S CUSTOMERS, "dinner and a movie" has taken on a new meaning. Landing in McDonald's restaurants nationwide, the redbox automated DVD-rental kiosk, one of the most popular kiosk deployments of 2007, has found its niche. It offers fast-food customers the same convenience and low price point for movies that McDonald's offers for its food.

Redbox's popularity isn't from having the most kiosks deployed, but from consumer buzz — as evidenced by last month's Self-Service World survey of the Top 10 Hottest Deployments. Redbox topped out at No. 1, as voted by readers of this magazine.

But having the most kiosks deployed doesn't hurt.

With around 4,000 DVD-rental kiosk locations, redbox is the leader in the automated DVD-rental market, which also includes DVDPlay and The New Release (operators of the MovieCube kiosk). Redbox believes it will reach 6,000 locations by the end of 2007, tripling the number of locations the company had at the beginning of the year.

"Redbox is firing on all cylinders," said Rufus Connell, research director for information technology at Frost & Sullivan. "They have good hardware and software, good marketing and good partnerships for their deployment locations."

The redbox business model is simple: Each kiosk carries about 500 DVDs, all of them recently released flicks. Redbox says the selection process is part art and part science. Large and medium box office films automatically make the cut, while a purchasing team selects lesser-known titles based on customers' perceived interest.

Customers select their movies using a touchscreen and swipe a credit or debit card for payment. Each movie costs $1 per night to rent; if the movie isn't returned, charges cease after 25 days and the customer owns the movie.

"The $1 rental is its biggest appeal, although the average customer ends up keeping it for longer than one night," said Gregg Kaplan, CEO of redbox. Kaplan said the average rental time is a little more than two nights, but only a small percentage of people keep DVDs past the 25-day mark.

To return a movie, a customer inserts the DVD back into the kiosk, hopefully

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right-side up. (The DVD cartridge reads, "There is no special reward for putting the DVD back in the case the right way, but you'll be a better person for it!") Rented DVDs can be returned to any redbox kiosk nationwide, a trait that is unique to redbox, Kaplan said.

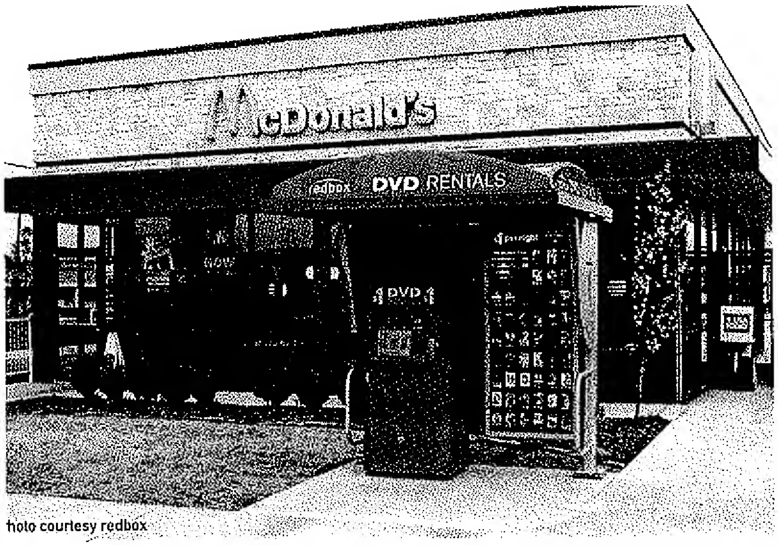


Photo courtesy redbox

Redbox takes advantage of its history with McDonald's Corp., which gives it access to its pick of McDonald's locations.

The model seems to be working. Redbox went from 93,000 rentals in 2003 to 21 million rentals in 2006. The company recently surpassed 50 million rentals.

Redboxes are found in McDonald's restaurants and in numerous grocery store chains, including Giant Food stores, Albertson's and Wegman's.

OF BURGERS AND BOXES

Redbox is the brainchild of McDonald's Corp. and was launched in 2001 as a concept of McDonald's new business development department. Kaplan has been there since the beginning.

"At the time, McDonald's was looking for long-term growth opportunities and ways to grow their core competencies," Kaplan said. "They were also looking for a worldwide project outside of the food sector."

Kaplan said McDonald's was poised to produce a new service outside of food for several reasons. First, he said the company is world-class at replicating a system of delivering products to customers, as represented by the growth of its franchises over the years.

Second, the chain is excellent at picking real estate and it knows where to place restaurants to draw the most traffic.

"The McDonald's locations we're in typically have ample parking, are located in busy areas and the restaurant draws customers with great-tasting meals and snacks," said Greg Waring, vice president of marketing for redbox.

Finally, Kaplan said McDonald's specializes in operating its service under a brand name, proven by cultural recognition of the Golden Arches, and now the redbox name.

The concept for redbox was based on self-service robotic vending machines that dispense high-end products such as cell phones and iPods. When designing the concept, Kaplan's business-development team also followed several macro trends they saw in the customer-service industry.

For instance, the team noted that automated self-service was becoming more prominent, mainly because of the convenience factor. It also noticed that people liked to use kiosks because they could be in control of their transactions.

"We also saw that consumers like to use machines in high-traffic locations that operate under one brand," Kaplan said.

"The result was a redbox brand that is generic enough that it can be used not only at McDonald's for DVD rental but could eventually become representative of financial kiosks or for ticketing kiosks at travel centers," he said.

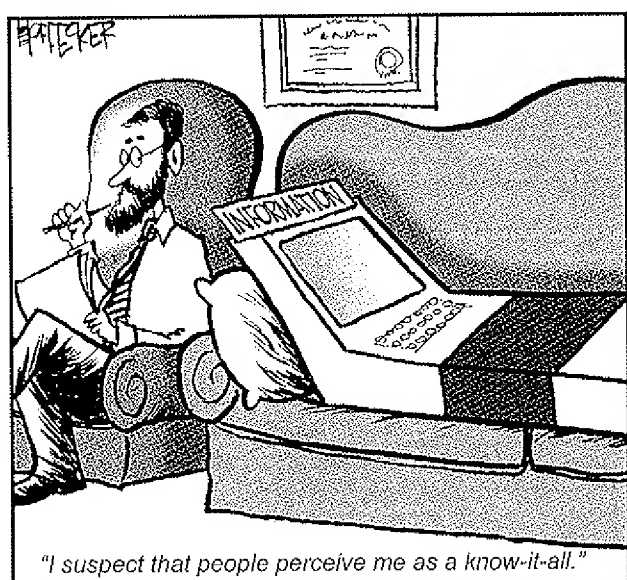
Redbox broke away from McDonald's in 2006. Kaplan said McDonald's was convinced the DVD-rental industry would be bigger than what McDonald's restaurants wanted to handle and that it might be a distraction to its core business.

But McDonald's didn't completely set redbox adrift. McDonald's Ventures LLC, a wholly owned subsidiary of McDonald's Corp., still owns about 47 percent of redbox Automated Retail LLC.

Another 47 percent of redbox is owned by Coinstar Inc., makers of the green self-service coin-counting kiosks found in many grocery stores. The remaining percentage is owned by investors of a tech company redbox acquired.

"Redbox's association with Coinstar has given it credibility," said Francie Mendelsohn, president of Summit Research Associates, a self-service industry research firm. "The partnership gave it entré with supermarkets around the country."

Giant Food Stores is one of those supermarkets. The chain operates 186 stores in the mid-Atlantic states and is



"I suspect that people perceive me as a know-it-all."

known for self-service initiatives such as self-checkout and self-service floral and seafood departments. Giant began deploying redbox kiosks in March 2006.

"The customer response to the redbox kiosks has been very positive," said Jamie Miller, public affairs manager for Giant Food Stores. "At this point, over 80 percent of our stores have deployed a redbox."

To date, grocery stores and McDonald's restaurants have proven to be the most effective locations for redbox, but that was not without careful planning. The first market test for redbox took place in Denver in 2002 with 10 kiosks. Now, Kaplan said, redbox has as many as 12 market tests going on at any one time, all studying the kiosks' effectiveness.

"It's gone beyond intuition. There is a great deal of analysis and measuring to find the optimal place to put these kiosks," Kaplan said.

THE ONLINE ADVANTAGE

Redbox competes in a market that includes brick-and-mortar stores such as Blockbuster or Movie Gallery and also in the online rental venue with sites such as Netflix, which deliver DVDs through the mail.

Tamara Mendelsohn, a senior analyst for Forrester Research, said, "redbox is part of a new set of players that is emerging and putting pressure on traditional merchants to enhance their customer and brand experiences and come up with more innovative ways to tie their channels together — be it stores, Web, mobile, etc."

Blockbuster has proven this theory by launching its Total Access program, a concept similar to Netflix but that allows customers to return and exchange movies at Blockbuster stores.

Redbox also offers online rental. On its Web site, which echoes the graphical user interface of its kiosks, users can search for the nearest redbox location and the availability of titles at that particular kiosk (made possible by real-time inventory updates), and reserve the movie for later pick-up.

"One of the reasons kiosks are gaining popularity is because of this online reservation," Kaplan said. "People were showing up at the movie stores only to find that their title isn't there."

"IT HAS NEVER BEEN PART OF REDBOX'S STRATEGIC GOALS TO KNOCK OUT RETAIL STORES."
— GREGG KAPLAN, CEO, REDBOX

A LITTLE HELP FROM FRIENDS

Google "redbox" and you will find Web sites such as redboxcodes.com, insideredbox.com and redboxfriends.com. These sites are not affiliated with redbox, but they aren't scam sites, either. In fact, redboxfriends.com really is a friend of redbox.

These third-party sites promote themselves as news and information sites for redbox kiosks, telling users about new and upcoming releases and hosting blogs. Redboxfriends.com even acts as a social networking site that allows members to upload pictures and chat within groups based on redbox movie titles.

The sites' main purpose, however, is to share promotional codes that give users free rentals. Redbox gives promotional codes to store managers and employees at redbox locations as an incentive to begin renting from the machine. Kaplan said the codes the Web sites share usually are leaked by store employees.

But where most companies would see these sites as undermining their business, redbox calls it "leveraging enthusiasm." Redbox gives out codes for free rentals, too — in exchange for the customer's e-mail address the first time he uses the machine.

"The codes are designed to give new customers a chance to use redbox," Kaplan said. The free rental is only for one night, and, again, since the average customer keeps the movie longer than one night, Kaplan thinks the $1 trade-off is well worth it.

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THE FUTURE OF THE RENTAL INDUSTRY

Just as music media evolved, moving in recent decades from the cassette tape to the CD and now to MP3, movie media has shifted from VHS to DVD and now is on the cusp of its next step. That step will determine what lies in the future for redbox and other players in the DVD-rental industry.

Some industry analysts believe Blu-Ray discs will be the next big thing in the DVD sector, beating out HD-DVDs in a VHS-or-Beta-style battle for consumer acceptance. Redbox hasn't decided how it may stock Blu-Ray or HD-DVD. "When consumer adoption of one or both of them begins to really accelerate, we will start to consider the decision, but not yet," Kaplan said.

Aside from DVD technology, another question persists: What effect will redbox and other automated rental kiosks have on the revenue of brick-and-mortar stores? Redbox carries only new releases and, although Blockbuster didn't comment on what percentage of its revenue comes from new releases, Kaplan predicts it to be about 85 percent to 90 percent.

But maybe the Blockbusters of the world shouldn't worry.

"It has never been part of redbox's strategic goals to knock out retail stores," Kaplan said. "We just concentrate on great service for our customers and getting them to come back."

Or, maybe they should. ■

FOR 47 RELATED ARTICLES.
SEARCH SELFSERVICEWORLD.COM.
KEYWORD: REDBOX

REDBOX REDUX

Majority-owned by McDonald's Ventures LLC (47%), Coinstar Inc. (47%).

Business model

- $1/night rentals, returned to any redbox kiosk nationwide.
- Each kiosk carries about 500 new-release DVDs.
- Companion Web site allows users to search for kiosk locations and movie titles and reserve a movie to pick up at a location of their choice.

Location strategy

Located at grocery stores and McDonald's restaurants, particularly those located in busy areas and equipped with ample parking.

History

2001....... Launched as a concept of McDonald's New Business Development
2003...... 93,000 rentals
2006...... Broke away from McDonald's
2006...... Surpassed 21-million-rental mark
2007....... 50 millionth rental and 4,000 locations; 6,000 locations expected by year-end

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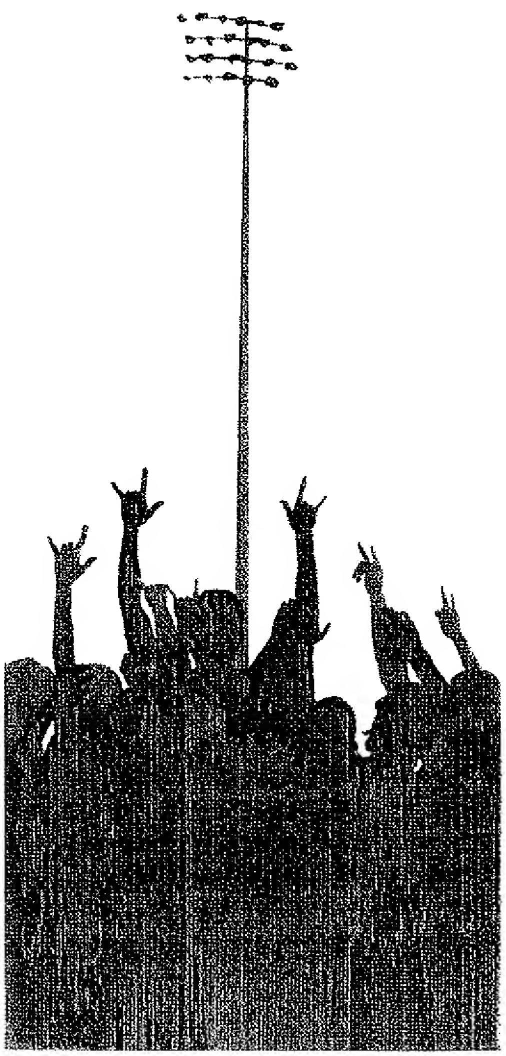
SUPERSTAR DEPLOYMENTS

Readers rank the 10 hottest self-service applications

PATRICK AVERY



IT'S A SWELTERING, HOT SUMMER in many parts of the world, and the self-service industry itself is sizzling. Dozens of kiosks are ablaze with better features, innovative peripherals and easier-to-use interfaces.

But several stand out as superstars.

After a careful analysis of the most-popular kiosks on the Internet, Self-Service World has determined the 10 kiosks with the most star power. That short list was given to our readers, who ranked them, choosing the top kiosk.

So, without further ado ...

NO. 1: REDBOX DVD RENTAL

Receiving more than 50 percent of readers' votes, nothing is hotter than redbox DVD kiosks. Located at thousands of McDonald's restaurants and in groceries around the United States, redbox is the nation's leader in self-service DVD rentals, growing from 93,000 rentals in 2003 to more than 21 million in 2006. It is on pace to reach 40 million rentals this year.

In 2002, redbox deployed its first kiosk, in Washington, D.C. The kiosk rollout started slowly and was deliberately paced, said Greg Waring, redbox's vice president of marketing.

"We wanted to spend a couple of years on our business model and really home in on the needs of our consumers," Waring said.

In 2004, redbox deployed its rental kiosks at Denver-area McDonald's restaurants. Its goal was to reach the 18-35 demographic and parents with young children. Redbox also made sure its machines were stocked with the latest new releases, which were kept in its kiosks for up to four months. The larger deployment was a success.

"They were emptying the machines on Friday and Saturday nights," Waring said.

With that triumphant deployment, redbox installed kiosks in McDonald's in other markets. It also struck up partnerships with grocery chains. Currently, redbox has 4,200 locations — one-third of those in McDonald's and two-thirds in groceries such as Albertsons, Giant Food Stores and Harris Teeter.

Waring credits the growing acceptance of automated technology as a reason for redbox's success.

"Plus, we're just an unbeatable value," he said.

Fast growth can have its pitfalls, but those issues have not seemed to affect redbox. With newer DVD technology such as Blu-ray and on-demand burning on the way, Waring said, the company will continue to adjust its business model to meet the needs of the current customer base.

"When the technology does change,

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Redbox is the nation's leader in DVD rentals, expecting to reach 40 million rentals in 2007.

it will only make redbox stronger," he said. "But right now, there is nothing available or on the immediate horizon that matches the convenience or value of what redbox offers now."

NO. 2: NCR EASYPOINT

NCR has been a power player in the self-service industry for the past few years with dozens of kiosk solutions. But the NCR EasyPoint kiosk stands out. With more than 50,000 deployments at retail giants such as Wal-Mart, Sears and Macy's, the EasyPoint has been tested and proven in heavy traffic environments.

In all its experience with kiosk deployments, NCR learned the thing most important to a successful deployment is one most people take for granted.

"The key for any kiosk is that it must always work," said Peter Charpentier, NCR's director of product management.

The reliability of the product has been its strength. In fact, many of the first models NCR came out with in 1999 still are in operation.

"It's been a proven and reliable product all these years," Charpentier said.

The EasyPoint, one of the oldest point-of-decision kiosks, was extremely innovative when it hit the market, Charpentier said.

"This was a product that didn't have to be on a pedestal or enclosure; it could be anywhere," he said. "It wasn't relegated to a PC in a box."

NO. 3: IBM ANYPLACE

A flexible kiosk with a broad reach — that was IBM's goal when it designed the Anyplace kiosk. Now, with tens of thousands of them in deployment, it's safe to say it is a winner, said Norma Wolcott, IBM's business executive for self-service solutions.

IBM's Anyplace kiosk is the most-deployed retail kiosk on the market. And there is substantial growth in the healthcare, hotel and airline industries, Wolcott said. The kiosks are used as time clocks, informational kiosks and ordering stations.

The "sleek look and feel" is the No. 1 reason customers like the Anyplace, Wolcott said. "It's easy to the eye, simple and not difficult to use."

IBM has teamed with hundreds of partners worldwide to customize the kiosk to meet its customers' needs. And the results have been astonishing.

"We are very pleased and invest heavily in self-service," Wolcott said. "We see success in the market through our partners and through the success of our sales."

NO. 4: COINSTAR COINS TO CASH

Coinstar placed its first coin-counting kiosks in four San Francisco Bay-area supermarkets in 1992. Today, Coinstar Coins to Cash kiosks can be found in more than 13,000 stores — including supermarkets, drug stores, mass merchants, financial institutions, convenience stores and restaurants — across the United States, as well as in the United Kingdom and Canada.

To date, Coinstar's coin-counting machines have processed 370 million transactions and more than $13 billion in change.

"Coinstar has grown beyond what our founder even imagined a decade-and-a-half ago when he invented self-service coin counting," said Dave Cole, Coinstar's chief executive officer. "Today, not only is Coinstar the top brand in consumer coin counting, but we've expanded to multiple lines of business, serving countries around the world."

Indeed, Coinstar's ventures have grown to include prepaid, gift cards and some financial services as well.

With $132.3 million in revenue in the first four months of 2007, Coinstar shows no signs of slowing down.

NO. 5: KODAK PICTURE MAKER

With the advent of its Picture Maker kiosk in 1993, Kodak introduced the world to the photo-finishing kiosk. Fourteen years later, the kiosk is the No. 1 installed photo kiosk, with more than 85,000 deployed worldwide.

The reason is high quality, said John Witzel, worldwide market development line manager.

"The Kodak brand has stood for quality, and the picture kiosk is an

AN OVERLY INTELLIGENT PAY-AT-THE-PUMP DEVICE

extension of that," he said.

Kodak offers many variants of the Picture Maker in mass-merchandising, food, craft and photo-specialty stores.

Since it entered the photo-finishing market, Kodak has seen it evolve from print-to-print copying to the enlargement and manipulation of digital pictures. Kodak also is keeping up to date with kiosk technologies involving Bluetooth, the Internet and mobile devices.

Despite a dominant hold on the U.S. market, Kodak plans to continue growing its presence worldwide as digital photography takes hold overseas.

One of the ways Kodak has been able to improve each year is by continuing to research what customers want, Witzel said, and in that area there always is more the company can do.

NO. 6: STARBUCKS HEAR MUSIC KIOSK

The Starbucks Hear Music kiosk may not be deployed in hundreds of locations, but the few of them out there have made an impact with Starbuck's regular customers.

The Hear Music kiosks offer customers the opportunity to burn personalized CDs from an extensive digital inventory. The kiosks' library has more than one million music tracks from 15,000 CDs.

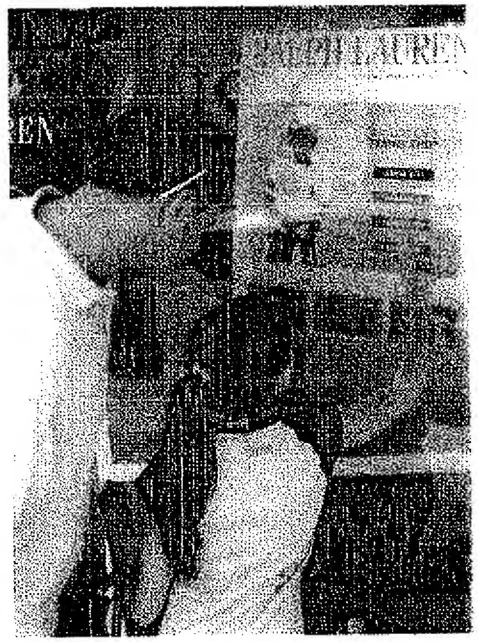
Starbucks initially rolled out kiosks in 45 coffeehouses in 2004, but according to news reports, were subsequently removed from many stores because they failed to produce revenue.

Starbucks did not return phone calls for comment, but many experts suggest the ubiquity of iTunes and other Internet music services contributed to the kiosks' lackluster reception.

However lightly used, the kiosks were excellent ambassadors for self-service, as their presence in this list affirms.

NO. 7: POLO RALPH LAUREN'S INTERACTIVE WINDOW

Sauntering down Chicago's Michigan Avenue is more than a stroll for shopping junkies. Rather, it's a walk in and out of some of the most popular fashion shops in the world. But at one clothing retailer in particular, customers don't have to enter the store to shop.



Polo Ralph Lauren's window-shopping touchscreen enables customers to shop from the store 24/7.

Polo Ralph Lauren's interactive window touchscreen allows shoppers to view inventory and make purchases, as well as get the latest in ski tips, live weather, interactive trail maps and footage from ski videos — all available 24 hours a day. Orders placed at the window are fulfilled by the company's online store.

This innovative kiosk was given the best-of-competition award at this year's Self Service Expo in Las Vegas.

The window-shopping touchscreen also has been deployed at Polo Ralph Lauren's New York and Aspen stores. Another installation, in London, coincided with the Wimbledon tennis tournament.

So far, the touchscreens are installed for limited periods only. Polo Ralph Lauren has not said whether they will become permanent fixtures.

NO. 8: DVDPLAY DVD KIOSK

Builder of the first automated DVD rental machine, DVDPlay is staking a claim in the highly competitive DVD rental market. Founded in 1999, the company first deployed its DVD rental kiosks at Safeway grocery stores. Those kiosks now are deployed in other grocery chains, quick-service restaurants and even military bases. Overall, roughly 1,000 are in the field.

DVDPlay's strategy is based on four principles, said Melissa Moore, the company's senior executive vice president. They are creating an easy user interface, putting the kiosks in convenient locations, giving the customers value and keeping the kiosks stocked with new releases. With the continuing execution of these strategies, Moore said, she believes DVDPlay can deploy up to 3,000 kiosks by 2008. Plans are to reach 10,000 eventually.

Right now, the only limitation to deploying more kiosks is time.

"We can't produce these machines fast enough," Moore said.

NO. 9: FUJIFILM GETPIX

Thanks to the growth of digital photography and the public's acceptance, photo-finishing kiosks are more successful than ever. Fujifilm's kiosks have been a part of this growth since 2001, when they were placed next to its minilabs.

Fujifilm's latest line of digital photo kiosks, the GetPix photo center, was released in 2005. Several thousand units now are in mass-merchandising stores, groceries and drug stores, said Jim Riekert, Fujifilm's director of marketing in the kiosks and imaging division.

One of GetPix's unique features allows customers to price shop from it, Riekert said. Customers can have their pictures immediately, processed onsite at the minilab, or sent

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overnight to a processing center. The price is proportionate to the level of convenience.

GetPix is Bluetooth compatible, enabling users to download images and order pictures from their mobile phones and pick them up at a local kiosk. But most users do it the new old-fashioned way.

"Consumers are more comfortable with putting a (digital memory) card into a kiosk, editing it, getting their pictures and then taking them home, all without handing anything over to someone," Riekert said.

NO. 10: WINCOR NIXDORF BEETLE

Perhaps the oldest point-of-sale kiosk solution hails from Germany. The Wincor Nixdorf Beetle was created in 1992 and was the first kiosk deployers could customize with their choice of applications and software.

"We opened the market to free choice," Nolte said.

The Beetle now is in its fifth-generation, with more than one million Beetle kiosks deployed. Most of the kiosks are used for POS transactions, although some are used as informational kiosks.

Currently, the greatest share of Beetle shipments is to Europe and Asia, though Wincor Nixdorf soon plans to launch a marketing campaign in the United States.

"That will definitely improve our presence in the United States," Nolte said.

Wincor Nixdorf has continued to refine the Beetle since its introduction. One of its strengths is its ability to support almost any computer operating system and to operate in "all sorts of scalable, modern open architecture," Nolte said. The product line has been a successful one for the company.

"The Beetle name will be kept for a long time," he said.

FOR 179 RELATED ARTICLES, SEARCH SELFSERVICEWORLD.COM, KEYWORD: **DEPLOYMENT**

A STAR IS BORN

Good management makes superstars. Where would Elvis be without Col. Tom Parker? Or the Beatles without Brian Epstein? Or Milli Vanilli without Frank Farian?

To crown the hottest kiosk deployment, the editorial management team at Self-Service World met earlier this year to come up with a comprehensive list of successful kiosks in deployment. Those 55 deployments were analyzed to determine the 10 most-popular kiosks on the Web. The editorial staff then developed a survey that asked readers of Self-Service World to rank those deployments in order to determine the hottest kiosk. After two weeks, our staff tallied the votes to reveal the winner.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): William H. Barber et al.	Group Art No.: 3627
Serial No.: 09/903,444	Examiner: SHEIKH, ASFAND M
Filed: 09 July 2001	Confirmation No. 9729
For: SYSTEM AND KIOSK FOR COMMERCE OF OPTICAL MEDIA THROUGH MULTIPLE LOCATIONS	

MAIL STOP RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

AMENDMENT AND RESPONSE TO FINAL OFFICE ACTION

Sir:

Please consider these amendments and remarks in response to the final Office Action of 03 May 2007.

Amendments to the Claims begin on page 2 of this paper.

Remarks/Arguments begin on page 9 of this paper.

CLAIMS

What is claimed is:

1. (Previously Presented) A method for distributing optical recorded media to and from users, comprising the steps of:

coupling one or more kiosks to a central server via the Internet, each of the kiosks containing a plurality of optical recorded media;

determining, at the server, inventory of the optical recorded media of each of the kiosks;

routinely obtaining, at the server, operational status of each of the kiosks;

automatically interfacing with a first user via a touch screen at a first kiosk in a first transaction for first local optical recorded media, the touch screen providing a touch-selectable listing of optical recorded media, including the first local optical recorded media, contained within the first kiosk, the first kiosk being one of the kiosks, the first user being one of the users;

automatically communicating between the first kiosk and the server to authorize the first transaction;

dispensing the first local optical media from the first kiosk to the first user if the first transaction is approved; and

accepting return of the first local optical media into rentable inventory of a second kiosk, the second kiosk being another one of the kiosks.

2. (Cancelled)

3. (Previously Presented) A method of claim 1, wherein the step of accepting return of the first optical media comprises the steps of capturing a digital image of a first code on the first optical media and scanning the image to determine a group identifier, the group identifier indicating which of the kiosks the first optical media may be returned to, and accepting the first optical media into rentable inventory of the second kiosk when the second kiosk is associated with the group identifier.

4. (Original) A method of claim 3, further comprising the steps of rotating the image, via internal software to the first kiosk, and rescanning the first code to determine the group identifier.

5. (Original) A method of claim 3, wherein the step of capturing a digital image comprises capturing a second code on the first optical media and scanning the image to determine a disk identifier, the disk identifier uniquely identifying the first optical media, and reporting inventory of the first optical media to the central server if the first optical media is accepted at the second kiosk.

6. (Original) A method of claim 5, further comprising the steps of rotating the image, via internal software to the first kiosk, and rescanning the second code to determine the disk identifier.

7. (Original) A method of claim 3, wherein one or both of the first code and second code comprise a bar code.

8. (Cancelled)

9. (Previously Presented) A method of claim 3, wherein the step of accepting return of the first optical media into rentable inventory of the second kiosk comprises the steps of sensing characteristics of a case housing the first optical media, determining if the characteristics match predetermined characteristics associated with the second kiosk, and opening a door to an input/output slot of the second kiosk to accept the case and optical media when the characteristics match the predetermined characteristics.

10. (Original) A method of claim 9, wherein the predetermined characteristics are defined by physical structure of the case.

11. (Original) A method of claim 10, wherein the physical structure forms one or more holes and one or more blocked regions in the case, and wherein the step of sensing characteristics comprises sensing the holes and blocked regions.

12. (Previously Presented) A method of claim 1, determining inventory at the server comprising tracking inventory movement of the first optical media between the first kiosk and the second kiosk.

13. (Original) A method of claim 1, further comprising the steps of obtaining and storing one or more images through an image capturing device located within, or in proximity to, the first kiosk.

14. (Original) A method of claim 13, wherein the step of obtaining comprises the step of imaging a person proximal to the first kiosk.

15. (Original) A method of claim 13, wherein the step of obtaining comprises the step of imaging a person interacting with the first kiosk.

16. (Original) A method of claim 13, wherein the step of obtaining comprises the step of imaging a person conducting a user identification or credit card input at the first kiosk.

17. (Original) A method of claim 13, further comprising the step of transmitting the images to the central server.

18. (Previously Presented) A method of claim 1, further comprising the steps of:

automatically interfacing with a second user at a second kiosk in a second transaction for second local optical recorded media, the second local optical media contained within the second kiosk, the second kiosk being one of the kiosks and not the first kiosk, the second user being one of the users;

automatically communicating between the second kiosk and the server to authorize the second transaction; and

dispensing the second local optical media to the second user, at the second kiosk, if the second transaction is approved.

19. (Original) A method of claim 18, further comprising the step of managing the first and second kiosks from the central server.

20. (Original) A method of claim 18, further comprising the steps of communicating advertising information from the server to a third kiosk, the third kiosk being one of the kiosks, and communicating the advertising information to users at the third kiosk.

21. (Original) A method of claim 20, wherein the step of communicating the advertising information comprises one of (a) displaying the information on a screen at the third kiosk and (b) audibly communicating the information to the users through speakers at the third kiosk.

22. (Cancelled)

23. (Original) A method of claim 1, further comprising the step of backing up at least part of information stored in the central server within internal memory within the first kiosk.

24. (Previously Presented) A method of claim 1, further comprising the steps of profiling user transactions at the second kiosk and communicating advertising information at the second kiosk based on the profiling of user transactions.

25. (Previously Presented) A method of claim 1, further comprising the steps of profiling user transactions at the first kiosk and communicating advertising information at the first kiosk based on the profiling of user transactions.

26. (Original) A method of claim 1, further comprising the step of managing a group of kiosks through the central server via a personal computer connected to the Internet, the group of kiosks being a subset of all the kiosks.

27. (Previously Presented) A method of claim 26, wherein the step of managing the group of kiosks comprises managing advertising information communicated to users at any of the kiosks within the group of kiosks.

28. (Original) A method of claim 26, further comprising determining inventory at any of the kiosks within the group of kiosks.

29. (Previously Presented) A method of claim 1, the step of determining comprising determining inventory of each of the kiosks via Internet access through the central server.

30. (Original) A method of claim 29, further comprising the step of emailing discount coupons to the first user through the Internet and based on the inventory.

31. (Previously Presented) A method of claim 1, the step of routinely obtaining comprising identifying one or more alarm states associated with the first kiosk.

32. (Original) A method of claim 31, further comprising the steps of automatically identifying the alarm states and automatically sending information about the alarm states to an administration associated with the central server.

33. (Previously Presented) A method of claim 32, further comprising the step of communicating one or both of voice and text messages to the administration as a

message communicated by one or more of email and a mobile phone, pager or other wireless device.

34. (Currently Amended) A method of claim 1, further comprising the step of generating automatic, individually-targeted promotions at one or more of the kiosks.

35. (Currently Amended) A method of claim 34, wherein the step of generating automatic, individually-targeted promotions comprises the step of processing unique promotion codes.

36. (Previously Presented) A method of claim, 35, wherein the step of processing unique promotion codes comprises the step of obtaining the promotion codes from the touch screen at the first kiosk.

37. (Original) A method of claim 35, wherein the step of processing unique promotion codes comprises the step of obtaining the promotion codes from a magnetic card swipe through a reader at the first kiosk.

38. (Currently Amended) A method of claim 1, further comprising the step of distributing a[[]]an individually-targeted coupon to one or more users of the system.

39. (Currently Amended) A method of claim 38, wherein the step of distributing[[a]]an individually-targeted coupon further comprises the step of distributing a coupon to a user of the first kiosk.

40. (Currently Amended) A method of claim 39, wherein the step of distributing [[a]]an individually-targeted coupon to a user comprises the step of distributing a coupon activated by a transaction at the first kiosk.

41. (Original) A method of claim 1, further comprising the step of administering kiosk business data through a remote web-interface.

42-62. (Cancelled)

63. (Previously Presented) A method for distributing optical recorded media to and from users, comprising the steps of:

coupling a plurality of kiosks to a central server via the Internet, each of the kiosks configured to dispense a plurality of optical recorded media;

determining, at the server, inventory of the optical recorded media of each of the kiosks;

routinely obtaining, at the server, operational status of each of the kiosks;

automatically interfacing with a first user via a touch screen at a first kiosk in a first transaction for first local optical recorded media, the touch screen providing a touch-selectable listing of optical recorded media, including the first local optical recorded media, contained within the first kiosk, the first kiosk being one of the kiosks, the first user being one of the users;

automatically communicating between the first kiosk and the server to authorize the first transaction;

dispensing the first local optical media to the first user if the first transaction is approved; and

accepting return of the first local optical media into rentable inventory of a second kiosk, the second kiosk being one of the kiosks.

64. (Previously Presented) A method of claim 63, wherein the step of accepting the first optical media into rentable inventory of the second kiosk comprises the steps of capturing a digital image of the first optical media.

65. (Original) A method of claim 64, further comprising the step of electronically scanning the image to decode one or more bar codes on the first optical media to determine an identifier of the first optical media.

66. (Previously Presented) A method of claim 63, determining inventory at the server comprising tracking inventory movement of the first optical media between the first kiosk and the second kiosk.

67. (Previously Presented) A method of claim 63, further comprising communicating advertising information from the server to any of the plurality of kiosks, to communicate advertising information to the users.

68. (Original) A method of claim 63, further comprising the steps of profiling user transactions at one of the kiosks and communicating advertising information to the kiosk based on the profiling.

69. (Cancelled)

70. (Currently Amended) A method of claim 63, further comprising the step of generating <u>automatic, individually-targeted </u>promotions at one or more of the kiosks.

71. (Original) A method of claim 63, further comprising the step of distributing a coupon to a user.

72-73. (Cancelled)

REMARKS/ARGUMENTS

Claims 1, 3-7, 9-21, 23-41, 63-68, 70 and 71 remain pending in the instant application (hereinafter, the '444 Application). Claims 34, 35, 38-40 and 70 are amended for clarity, without new matter pursuant support identified herein below. Claims 2, 8, 22, 42-62, 69 and 72-73 were previously cancelled.

It is believed that the following remarks address and resolve all issues presented in the final Office Action dated May 3, 2007. The Examiner notes that "claims 63-68 and 71 are substantially similar" to other pending claims, and does not separately address these claims. See Office Action p. 30, ¶3. Hence, the following remarks discuss claims 63-68 and 71 with like claims.

In addition, this Amendment and Response is filed with a Declaration under 35 U.S.C. §1.132 (the "'§1.132 Declaration") and Exhibits A-E, avowing commercial success and copying by others.

Support for Amended Claims

The amendments to claims 34, 35, 38-40 and 70 are fully supported by the '444 Application. For example, "[t]he system tracks interactions from customers at either a connected kiosk or at a computer connected to the database server through the Internet. Customers may be profiled according to individual information, such as movie-type preferences." Specification p. 5, lines 32-34. "Receipts may include transactional information as well as advertising and links to specific web sites...These receipts may also contain advertisements and promotional information as well as web links. ***These advertisements and promotions may be targeted to customers based on their profile data***." Specification p. 3, lines 15-21. "Once a customer enters e-mail information at the kiosk or at the website, that customer is eligible to receive frequent tailored e-mailed updates and e-coupons from the central server on current promotions." Specification p. 11, lines 17-19.

Claim Rejections – 35 U.S.C. § 103

<u>Independent Claims</u>

Claim 1 and (per the Examiner's note) claim 63 stand rejected as being unpatentable over U.S. Patent No. 5,159,560 ("Newell") in view of U.S. Patent No.

5,934,439 ("Kanoh") and U.S. Patent No. 5,095,195 ("Harman"). Applicants respectfully traverse the rejection.

In order to establish *prima facie* obviousness over claim 1 or claim 63, Newell in view of Kanoh and Harman must teach or suggest a method for distributing optical recorded media to and from users, including each feature of claim 1 or claim 63. The Examiner notes, and applicants agree, that multiple features of claim 1 (and also claim 63) are missing from Newell. The Examiner then states that it would have been obvious for one to modify the teachings of Newell to include certain features of Kanoh and Harman. In particular, the Examiner states that it would have been obvious to modify Newell to include the following features construed in Kanoh:

- kiosks connected to a server via the Internet;
- communicating between a kiosk and a server via the Internet to authorize transactions, and
- dispensing products based upon such authorization.

The Examiner likewise takes the position that it would have been obvious to modify Newell to include the touch screen and touch-selectable listing of media of Harman.

Applicants respectfully disagree and traverse the rejection. The Examiner has not cited to any single teaching or suggestion to support his many conclusory assertions for why he personally believes it is obvious to combine the references, as was required of the Examiner according to Section 2143.01 of the MPEP. Applicants further submit that the combined features of the claim 1 and claim 63 are not obvious, at least given the secondary considerations of nonobviousness provided below.

<u>*Prima Facie* Obviousness Has Not Been Established – Rejection Fails to Cite to Any Prior Art Teaching or Suggestion that Indicates Desirability to Combine the References</u>

As codified in Section 2143.01 of the MPEP, *prima facie* obviousness cannot be established by merely picking and choosing unrelated features from various references. Instead, the Examiner has the additional required burden to additionally indicate in the written record where the <u>prior art itself</u> (absent any evidence in the record of some well-known principle in the art) affirmatively teaches or suggests the motivation to combine the references as proposed. In the present case, however, the rejections do not even assert

that any such teachings or suggestions exist in the prior art. The rejections repeatedly state nothing more than the *Examiner's* conclusory personal opinion of why he thinks the references can be combined. The Federal Circuit though, has expressly held that mere conclusory statements from the Examiner, without any actual evidence cited on the record in support thereof, cannot satisfy the Examiner's burden to establish the obviousness of combining the references. See *In re Lee,* 277 F.3d 1338 (Fed. Cir. 2002).

For example, the entire rationale for combining the Newell reference with the Kanoh reference is the single conclusory statement that "The Examiner *takes the position* that it would have been obvious to one of ordinary skill in the art to modify the teachings of Newell ... as taught by Kanoh ... [because] one of ordinary skill in the art would have been motivated to combine the teachings ***in order to correctly identify and authenticate a customer before dispensing a product to the customer***." Page 4 of the outstanding Office Action, emphasis added. Not one single citation to either reference, however, is provided by the Examiner in support of this purely conclusory statement. Applicants submit that nowhere, in either reference, is the desire "to correctly identify and authenticate a customer before dispensing a product to the customer" ever actually described. More particularly, neither reference teaches or suggests that the motivation conceived of by the Examiner can be accomplished according to the unique combination of features presented in the pending claims. Accordingly, the record entirely fails to satisfy this minimum requirement to establish obviousness, and the rejection should be withdrawn for at least these reasons.

Furthermore, the rationale asserted by the Examiner for combining the teachings of the Harman reference with Newell and/or Kanoh is equally deficient on its face. Once again, the entire rationale asserted is a single conclusory statement of the Examiner's own personal opinion, and not based on any actual evidence from any of the three cited references. Pages 4-5 of the outstanding Office Action. Without such required evidence on the record – evidence capable of objective review and rebuttal – the rejection presents nothing more than a case of impermissible hindsight. The rejection picks and chooses features from the various references, and then only *presumes* the obviousness of combining such features based on the Examiner's own opinion. By definition, the Examiner's personal opinion can never satisfy the definition of "documentary evidence,

capable of objective review and rebuttal." The Examiner, for example, has not submitted anywhere in the record how he arrived at his conclusory opinion, where he received the knowledge that forms the basis of that opinion, and the actual dates such knowledge was obtained by him. The present case therefore presents the exact situation expressly rejected by the Federal Circuit in *Lee*. The rejection should again be withdrawn for at least these reasons.

Lastly, the impropriety of merely presuming the obviousness of combining the cited references is further demonstrated by the objective evidence submitted by Applicants herewith as secondary considerations to rebut a properly established *prima facie* case of obviousness. As explained above though, a proper *prima facie* case has not been established, and the rejection should be withdrawn because of the deficiencies on its face. Nevertheless, the additional rebuttal evidence presented below serves to further prove that, not only has required motivation to combine the references not been established, such motivation *could not have been* established in light of such additional rebuttal evidence.

<u>Secondary Considerations of Nonobviousness - '132 Declaration of Jens Horstmann</u>

Applicants direct the Examiner's attention to the §1.132 Declaration of Jens Horstmann, filed herewith (the "'132 declaration"). Applicants submit that the '132 declaration provides ample secondary considerations, in the form of evidence of commercial success, to rebut the current holding of obviousness.

Pursuant MPEP §2141(III), "Objective evidence or secondary considerations such as unexpected results, commercial success, long-felt need, failure of others, copying by others, licensing, and skepticism of experts are relevant to the issue of obviousness and must be considered in every case in which they are present. When evidence of any of these secondary considerations is submitted, the examiner must evaluate the evidence." See also MPEP §716.01(a). Furthermore, "[o]ffice policy is to follow *Graham v. John Deere Co.* in the consideration and determination of obviousness under 35 U.S.C. 103. As quoted above, the four factual inquires enunciated therein as a background for determining obviousness are as follows:

A) Determining the scope and contents of the prior art;

B) Ascertaining the differences between the prior art and the claims in issue;

C) Resolving the level of ordinary skill in the pertinent art; and

D) ***Evaluating evidence of secondary considerations***." MPEP 2141(I), emphasis added.

The '132 declaration and Exhibits demonstrate DVDPlay, Inc.'s commercial success, including market share, as required pursuant MPEP §716.03(b)(IV). In particular, DVDPlay, Inc., the assignee of the entire right, title and interest in and to the '444 application, currently holds 16-20% of the movie rental kiosk market.

As noted in the '132 Declaration, the '444 application and its parent applications (U.S. 09/578,631, U.S. 60/135,851 and U.S. 60/143,601) introduced a unique combination of steps for distributing optical recorded media to the DVD vending kiosk market. Prior to the '444 application, there were no kiosks or machines that combined DVDPlay's steps in a method for distributing optical recorded to and from users. Even now, the Examiner does not find the claimed combination in any one of 13 cited references. If the claimed combination of steps was so obvious, why did no one use it in the DVD vending kiosk market prior to the '444 application and its parent applications? And why did both the DVD vending kiosk market and DVDPlay, Inc., grow so quickly after the introduction (and copying) of the combination claimed by Applicants? The answer is: because the '444 Application is not obvious under 35 U.S.C. §103.

Consider, for example, the explosive growth of the DVD vending kiosk market after the '444 application and its parent applications. Prior to these applications, the market was essentially non-existent. Applicants performed an Internet search for statistics of the DVD vending kiosk market prior to 2000 (the filing year of U.S. 09/578,631, of which the '444 application is a continuation) and prior to 1999 (the parent provisional filing year), and found very little. In fact , it is worth noting that DVD rentals did not surpass VHS rentals until 2001. See "DVD," Consumer Electronics Association ©2007, at http://www.ce.org/Press/CEA_Pubs/929.asp. Applicants encourage the Examiner to conduct his own search for pre-2001 DVD rental kiosk sales.

On the other hand, since DVDPlay introduced its method for distributing optical recorded media to and from users, the movie rental kiosk market has grown to an estimated $120 million per year industry (see '132 Declaration at Section B, number 5). DVDPlay, Inc.'s revenue for 2007 is expected to be about $18 million (18-20% of the

current market). DVDPlay, Inc. rented its 10 millionth movie in September of 2007. See '132 Declaration at Section B, number 5 for additional statistics. Note also the **skepticism of experts** (another secondary consideration per MPEP §2141(III)) evidenced by Brad Hackley, vice president of business development for the home video group at industry tracker Rentrak: "Practically no one saw this coming...the kiosks came out of nowhere." See "Self-Serve Movie Rental Kiosks A Surprise Hit With Consumers; DVD vending machines find national audience, put pinch on retailers," Investor's Business Daily, May 31, 2007 at Exhibit A, pp. A9-A10, *esp.* p. A10, ¶4. See also heading entitled "Secondary Considerations of Nonobviousness – Skepticism of Experts," below.

Likewise, DVDPlay's competitors, in particular, majority market holder Redbox, have enjoyed increased commercial success since DVDPlay, Inc. introduced its method and related systems. However, it is important to note that "***Redbox jump-started its DVD rental business by offering re-branded kiosks manufactured and operated by Silicon Valley-based DVDPlay, Inc***. These machines were deployed to 140 locations in the McDonald's test market of Denver, Colorado. In May of 2005, Redbox announced it was phasing out the DVDPlay-manufactured machines and instead would contract Solectron to create and manufacture a custom kiosk design." Wikipedia's "Redbox" article at http://en.wikipedia.org/wiki/Redbox, emphasis added.

In other words, Redbox created its current machines only after several years' experience with DVDPlay, Inc.'s kiosks and methods, which incorporate DVDPlay's unique combination of claimed features. Redbox's success did not occur in a bubble, but is linked to the '444 application and its parents. See, e.g., Sections C and D ("Copying by Others" and "Commercial Success of Others Due to Copying DVDPlay Systems"), avowing copying of the DVDPlay systems by Redbox and Redbox's subsequent success. Given Redbox's majority share of the market and Redbox's experience with and exposure to the DVDPlay systems, Applicants submit that the majority of commercial success of the DVD vending kiosk market in general (since the filing of the '444 application and its parents) can be attributed to Applicants' invention – i.e., the unique combination of claim elements in the '444 application.

In accord with MPEP §716.03(b)(II), this commercial success flows from the functions and advantages disclosed or inherent in the specification. There is a nexus

between the claimed inventions of the '444 Application and this commercial success. See §1.132 Declaration, item 7 and cited Exhibits. See §1.132 Declaration, item 7 and cited Exhibits. Among exemplary disclosures, see p. 2, line 32-p. 3, line 34 and p. 7, line 25 - p. 9, line 29 of the specification.

For example, as in claim 1 of the '444 application, DVDPlay systems operate according to a method for distributing optical recorded media to and from users, including coupling one or more kiosks to a central server via the Internet. See, e.g., Exhibit B, pp. B1, ¶2-3 and 6; B7, last ¶; B11, last ¶; B25, ¶2; B26, ¶1; B80, ¶3 (noting the "huge benefit" of DVDPlay, Inc.'s Internet connectivity) . Each kiosk contains a plurality of optical recorded media. See, e.g., Exhibit B, pp. b1, ¶8; B26, ¶5, B30, ¶4. See also Exhibit C, pp. C2-C3 and C11. Inventory of the optical recorded media of each of the kiosks is determined at the server and operational status of each of the kiosks is routinely obtained at the server. See, e.g., Exhibit B, pp. B1, ¶7; B9, ¶1; B11, ¶¶2 and 6; B20, ¶10; B25, ¶1; B27, ¶1; note also Tejas Videos' CEO citing reduced costs "due to the ability to remotely manage tasks from one centralized location." p. B80 ¶2. The method also includes the step of automatically interfacing with a first user via a touch screen at a first of the kiosks, in a first transaction for first local optical recorded media. See, e.g., Exhibit B, p. B11, ¶5 description of "fully-automated touch-screen interface," see also pp. B1, ¶8; B4, ¶5; B11, ¶5. See also Exhibit C, pp. C1-C5 and C7. The touch screen provides a touch-selectable listing of optical recorded media, including the first local optical recorded media, contained within the first kiosk. See, e.g., Exhibit C, pp. C1-C5 and C7. The first kiosk and the server automatically communicate to authorize the first transaction. See, e.g., Exhibit B, p. B11, especially ¶6 noting intelligent backend that communicates with kiosk and manages credit transactions. See also Exhibit B, p. B9, ¶1; Exhibit C, pp. C6-C9. The first local optical media is dispensed from the first kiosk to the first user if the first transaction is approved. See, e.g., Exhibit C, pp. C6-C9. The method also includes the step of accepting return of the first local optical media into rentable inventory of a second of the kiosks. See, e.g., Exhibit B, pp. B13, ¶2; B15, ¶4; B24, 3; B26, ¶4, noting that "All returned movies are instantly available for re-rental". Exhibit B p. B37, ¶2. See also letter from Tejas Videos' CEO, stating that returning to another kiosk is "a huge benefit", Exhibit B, p. B80, ¶3.

As in claim 63 of the '444 application, the DVDPlay system operates according to a method for distributing optical recorded media to and from users. A plurality of kiosks are coupled to a central server via the Internet, each of the kiosks configured to dispense a plurality of optical recorded media. See, e.g., Exhibit B, pp. B1, ¶2-3 and 6; B7, last ¶; B11, last ¶; B25, ¶2; B26, ¶1; B80, ¶2. Each kiosk contains a plurality of optical recorded media. See, e.g., Exhibit B, pp. b1, ¶8; B26, ¶5, B30, ¶4. See also Exhibit C, pp. C2-C3 and C11. Inventory of the optical recorded media of each of the kiosks is determined at the server, and operational status of each kiosk is routinely obtained at the server. See, e.g., Exhibit B, pp. B1, ¶7; B9, ¶1; B11, ¶¶2 and 6; B20, ¶10; B25, ¶1; B27, ¶1; B80, ¶4. The DVDPlay system automatically interfaces with a first user via a touch screen at a first of the kiosks, in a first transaction for first local optical recorded media. See, e.g., Exhibit B, p. B11, ¶5 description of "fully-automated touch-screen interface," see also pp. B1, ¶8; B4, ¶5; B11, ¶5. See also Exhibit C, pp. C1-C5 and C7. The touch screen provides a touch-selectable listing of optical recorded media, including the first local optical recorded media, contained within the first kiosk. See, e.g., Exhibit C, pp. C1-C5 and C7. The DVDPlay system automatically communicates between the first kiosk and the server to authorize the first transaction. See, e.g., Exhibit B, p. B11, especially ¶6 noting intelligent backend that communicates with kiosk and manages credit transactions. See also Exhibit B, p. B9, ¶1; Exhibit C, pp. C6-C9. If the first transaction is approved, the first local optical media is dispensed to the first user. See, e.g., Exhibit C, pp. C6-C9. Upon return, the first local optical media is accepted into rentable inventory of a second of the kiosks. See, e.g., Exhibit B, pp. B13, ¶2; B15, ¶4; B24, 3; B26, ¶4, noting that "All returned movies are instantly available for re-rental". Exhibit B p. B37, ¶2; B80, ¶3 noting the "huge benefit" of accepting returns at a second kiosk.

The combined steps of claim 1 and the combined steps of claim 63 provide for high speed, remotely managed and accessible kiosks with small physical footprints, which allow credit-card transactions, remote administration and return of media to a kiosk other than the kiosk from which the media was rented. See repeated reference to such benefits throughout the Exhibits to the §1.132 Declaration, e.g., at Exhibit B, p. B1, ¶¶ 1-3 and 6; p. B3, ¶2; P. b4, ¶¶3-4, p. B11, ¶2; B13, ¶2; p. B24, ¶¶1-5; p. B37, ¶¶2, 4 and 5. "Internet connectivity enables remote administration – making it easy to gauge

customer preferences, deliver reports, restock products and keep track of financial data...Because these AEMs are Internet-connected, screen-navigable, cashless and remotely managed, labor administrative costs and responsibilities are kept to a minimum." Exhibit B p. B11, ¶2. Furthermore, connecting a kiosk or kiosks to a central server, as in claims 1 and 63, "permits realtime remote control and administration of all functions and features." Von Shows, CEO of Tejas Videos, Inc., see Exhibit B, p. B24, ¶3. See also Mr. Shows' comments regarding enhanced connectivity, management, diagnostic, inventory, efficiency, profitability, customer service and update benefits provided by DVDPlay systems, at Exhibit B, p. B80. Note especially Mr. Shows' comment that "without these features, I don't believe it would be economically feasible for me to run my operations as I currently do today." p. B80, ¶5. Note also that "DVDPlay kiosks score highly, much to the satisfaction of the convenience stores that house these kiosks, as the entire system is automated, including the inventory management." Frost Sullivan Award to DVDPlay at Exhibit B, p. B74, ¶1.

At the same time, the combined steps of claims 1 and 63 provide convenience to, and increase confidence in, customers transacting via the kiosks. See, e.g., Exhibit B, pp. B1-B2 (note that Freeflyr Automation is now DVDPlay, Inc.) and B20, ¶8; see also p. B55 ¶1 noting convenience and ease of use of Redbox machines, which are pre-dated by the '631 application and which copy features of the DVDPlay system. See '132 Declaration, "Copying by Others."

Applicants believe that the '132 Declaration alone provides ample secondary considerations (in the form of a showing of commercial success) to rebut the §103 rejection of claims 1 and 63. However, tables 1 and 2, below, present additional secondary considerations – namely, identification by one of skill in the art of claimed features as being different from or beneficial compared to "conventional options."

Secondary Considerations of Nonobviousness – U.S. Pat No. 7,234,609

Redbox (the majority player in the movie rental kiosk market) is the assignee of U.S. Patent No. 7,234,609 (hereinafter, "DeLazzer"), which was filed almost five years after the earliest effective date of the '444 application, and almost three years after the filing date of the '444 application. Many years after the priority date of the '444

application, DeLazzer cites multiple features of its claims as having "substantial benefits" and/or "distinguish[ing]...from conventional options." For example:

TABLE 1: CLAIM 1 OF THE '444 APPLICATION

Claimed Feature	**DeLazzer Recitation**
coupling one or more kiosks to a central server via the Internet, each of the kiosks containing a plurality of optical recorded media;	"***Several aspects of the present invention distinguish it from conventional options***...each dispensing machine has a satellite Internet uplink that ***networks all of the machines together through the Internet***, coordinates the user experience via the system website, and permits the system administrator to manage all of its operations at a centralized location." DeLazzer col. 6, lines 19-20 and 61-65.
automatically interfacing with a first user via a touch screen at a first kiosk in a first transaction for first local optical recorded media, the touch screen providing a touch-selectable listing of optical recorded media, including the first local optical recorded media, contained within the first kiosk, the first kiosk being one of the kiosks, the first user being one of the users; *and* automatically communicating between the first kiosk and the server to authorize the first transaction;	"The user interface control system can employ simple menus and a fixed set of keys for consumers to make their selections, it can employ break-resistant ***touch screens***, or it can employ a combination of both...For those consumers having a rental membership, the DVD rental experience can more readily be customized. The member can insert his/her membership card into the card reader and enter his/her personal identification number ('PIN') when prompted through the user interface control system...***the member selects a previously reserved movie or selects a new movie from the list of titles embodied in DVD media contained within the inventory of the dispensing machine.... The specific user request made at the machine (e.g., renting a new movie or payment by credit card) is then sent via satellite feed to a centralized system office in real-time for processing. Such a procedure ensures accurate and rapid handling of every user request as well as secure billing to any credit card account of the consumer***." DeLazzer col. 19, line 54 – col. 20, line 27, emphasis added.
accepting return of the first local optical media- into rentable inventory of a second kiosk, the second kiosk being another one of the kiosks.	"***As an added convenience, consumers will have the option of returning a DVD to machines other than the one from which they originally rented the movie***, preferably for an additional charge to cover any additional incremental administrative costs." DeLazzer col. 20, lines 38-42.

TABLE 2: CLAIM 63 OF THE '444 APPLICATION

Claimed Feature	**DeLazzer Recitation**
coupling a plurality of kiosks to a central server via the Internet, each of the kiosks configured to dispense a plurality of optical recorded media;	"***Several aspects of the present invention distinguish it from conventional options***...each dispensing machine has a satellite Internet uplink that ***networks all of the machines together through the Internet***, coordinates the user experience via the system website, and permits the system administrator to manage all of its operations at a centralized location." DeLazzer col. 6, lines 19-20 and 61-65.
automatically interfacing with a first user via a touch screen at a first kiosk in a first transaction for first local optical recorded media, the touch screen providing a touch-selectable listing of optical recorded media, including the first local optical recorded media, contained within the first kiosk, the first kiosk being one of the kiosks, the first user being one of the users; *and* automatically communicating between the first kiosk and the server to authorize the first transaction;	"The user interface control system can employ simple menus and a fixed set of keys for consumers to make their selections, it can employ break-resistant ***touch screens***, or it can employ a combination of both...For those consumers having a rental membership, the DVD rental experience can more readily be customized. The member can insert his/her membership card into the card reader and enter his/her personal identification number ('PIN') when prompted through the user interface control system...***the member selects a previously reserved movie or selects a new movie from the list of titles embodied in DVD media contained within the inventory of the dispensing machine.... The specific user request made at the machine (e.g., renting a new movie or payment by credit card) is then sent via satellite feed to a centralized system office in real-time for processing. Such a procedure ensures accurate and rapid handling of every user request as well as secure billing to any credit card account of the consumer***." DeLazzer col. 19, line 54 – col. 20, line 27, emphasis added.
accepting return of the first local optical media into rentable inventory of-a second kiosk, the second kiosk being one of the kiosks.	"***As an added convenience, consumers will have the option of returning a DVD to machines other than the one from which they originally rented the movie***, preferably for an additional charge to cover any additional incremental administrative costs." DeLazzer col. 20, lines 38-42.

The fact that later-filed DeLazzer (attached as Appendix A) cites the above features as different from or beneficial compared with conventional options *many years after* the priority date of the '444 application further evidences nonobviousness of claims 1 and 63.

If it was obvious to combine the features of claims 1 and 63 (as the Examiner contends), why were others touting benefits and differences of the claimed features over conventional systems, almost 3 years after the '444 application was filed? For example, if combining the teachings of Newell with the internet-connected kiosks of Kanoh (as interpreted by the Examiner) was obvious at the time of the Newell and Kanoh filings (1990 and 1997), then why does DeLazzer present such a combination as 'distinguishing from conventional options' almost seven years after the Kanoh filing date? The answer is: the combinations claimed in the '444 application were not obvious to one of skill in the art at the time the invention was made.

It is safe to presume that DeLazzer, inventor of the '609 patent, which "relates to a digital video disc (DVD) distribution system," is one of skill in the art. See DeLazzer col. 1, lines 6-9. If one skilled in the art (DeLazzer) considered the above features (at least in combination) different from what was conventional in 2004, then logically, the combined features of claims 1 and 63 would not have been obvious to one of skill in the art compared to what was conventional at an early time. Not in 2001, when the '444 Application was filed, nor in 2000, when parent application 09/578,631 was filed, nor in 1999, when parent provisional applications 60/135,851 and 60/143,601 were filed.

Applicants submit that the teachings of novelty and/or benefits in the DeLazzer patent and the attached '132 Declaration provide ample secondary considerations to rebut the Office's holding of obviousness. Accordingly, withdrawal of the §103 rejection of claims 1 and 63 is respectfully requested.

Dependent Claims

Claims 3-7, 9-21 and 23-41 depend from claim 1, and claims 64-68, 70 and 71 depend from claim 63. Courts have ruled that if an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious. In re Fine, 837 F.2d 1071.5 USPQ2d 1596 (Fed. Cir. 1988). Applicants have provided ample evidence of secondary considerations to show that claims 1 and 63 are nonobvious. Claims 3-7, 9-21 and 23-41 and claims 64-68, 70 and 71 are therefore allowable for at least this reason. However, these claims recite additional features not taught or suggested by the cited references. For example:

<u>*Claims 3-7 and 65*</u>: Claims 3-7 recite capturing a digital image of a code. The Examiner combines Newell with U.S. Patent No. 6,688,523 (hereinafter, "Koenck" in an attempt to establish *prima facie* obviousness. However, Newell specifically describes a "self-contained, automated vending apparatus." Newell col. 1, lines 67-68. Koenk specifically recites a "hand-held area image scanner" that scans a code to produce a digital signal that is processed and recognized off-line. Koenck col. 2, lines 7-23. Combining the hand-held scanner of Koenk with the apparatus of Newell therefore defeats the automation goals of Newell.

Claim 65 in particular recites capturing a digital image of first optical media and scanning the image to decode a bar code, to determine an identifier. As noted above, Koenk teaches a hand-held scanner, which defeats Newell's attempts at an automated system.

<u>*Claim 23*</u>: Claim 23 recites backing up at least part of information stored in the central server within internal memory within the first kiosk. The Examiner reasons that in Newell, reports would be backed up information within internal memory of a vending machine. Applicants disagree. Backing up means intentionally keeping data in more than one place for the duration of time that the data is kept. This is not the same as saving reports until they are sent to a central server. Newell is silent as to retaining reports in a vending machine memory after they have been sent. On the other hand, the '444 Application recites that "each kiosk maintains a backup memory of certain information from the central database server, so that transactions may occur even in the event of communication failure between the kiosk and database server. By way of example, each kiosk may contain 12 G-bytes of memory to store the certain information from the database server." Newell does not teach this feature of claim 23.

<u>*Claims 24, 25 and 68*</u>: The Examiner asserts that U.S. Patent No. 6,965,869 (hereinafter, "Tomita") discloses profiling user transaction at a kiosk and communicating advertising information based on the profiling of user transactions. Applicants again must disagree. Tomita accumulates points when transactions occur. In particular, the issuer provides point information to the point accumulator and the point accumulator accumulates the points and transfers the updated point information to the point notifier

which notifies the customer terminals and ultimately the customers. See Tomita col. 5, lines 41-47. The purchase data is compared to the purchase condition table to determine if points are calculated and transferred to the points accumulator for a transaction.

Tomita is silent as to transaction data being stored in a customer profile or used for communicating advertising information that is based on the transaction data. See Tomita col. 8, lines 43-52. Rather, Tomita simply adds transaction points to total points. No particular information is stored about a transaction, therefore it is not possible to communicate transaction-based advertising information at the kiosk. Even if the Examiner considers "points information" of a transaction to be the same as profiling a user transaction as claimed (applicants submit that they are <u>not</u> the same), Tomita still does not communicate advertising information at the kiosk based on the profiling of that user transactions.

Further, note that Tomita's step S8 displays point service information which can include special days particular to the customer, such as a birthday, wedding anniversary. This information is particular to a customer, but it is not part of a transaction profile as asserted by the Examiner. See Tomita col. 6 lines 26-32.

<u>Claims 26-28</u>: The Examiner notes that Newell does not teach managing kiosks via a server, but asserts that the judgment command in Kanoh is a form of managing kiosks for distribution of media. The Examiner further asserts that it would have been obvious to one of skill in the art to modify Newell to include kiosk management through the central server via a personal computer connected to the Internet.

Applicants respectfully disagree. Claims 26-28 recite managing a group of kiosks that is a subset of all of the kiosks. Neither Newell nor Kanoh make any provision for managing a subset of kiosks via a personal computer. Further, applicants note that Kanoh allows access to the central computer <u>only</u> by a financial institution. The financial institution would logically not be allowed to manage the kiosks.

<u>Claim 29</u>: Claim 29 recites determining inventory of each of the kiosks via Internet access through the central server. The Examiner notes that Newell is silent with respect to determining inventory levels via an Internet connection, but states that Kanoh determines the status of videos via an online connection to the server. Applicants

respectfully disagree. Kanoh is silent as to determining inventory of kiosks via the Internet. Even if each of Kanoh's kiosks are transferring their individual kiosk inventory status to a central server, Kanoh does not teach access to the central server by any party but a financial institution, and then, only for purposes of financial transactions. See Kanoh col. 6, lines 41-56, cited by the Examiner. Therefore, there is no way to determine inventory of kiosks via Internet access through the central server.

Claim 30: Claim 30 depends from claim 29 and recites emailing discount coupons to the first user through the Internet and based on kiosk inventory. The Examiner relies upon U.S. Patent Publication No. 20040064371 (hereinafter, "Crapo") for this feature, noting that it is absent from Newell, Kanoh and Harman.

Respectfully, Crapo also fails to provide this feature. Crapo does not email coupons based upon kiosk inventory. Rather, as the Examiner notes, Crapo recites emailing coupons based upon partner inventory. "For example, such communications may include last minute deals, offers of bonus miles, specials, sales or other incentives proved based on partner inventory or partner input on behavior the partners are interested in motivating." Crapo p. 6, ¶[0052].

The partner inventory that Crapo refers to is the inventory of credit card company partners, in particular, miles: "The partners 204 can be any individual or company that wants to generate loyalty and to do so offers WebMiles in conjunction with particular behaviors, most often purchasing behaviors, that the partner 204 wants to encourage." Crapo p. 3, ¶[0035]. Partner inventory (miles) is not the same as kiosk inventory. Thus combining Newell with Crapo still does not teach or suggest emailing discount coupons based upon kiosk inventory.

Claims 34, 38-40 and 70: Amended claims 34, 38-40 and 70 recite generating automatic, individually-targeted promotions. The Examiner looks to U.S. Patent No. 6,954,732 (hereinafter, "Delapa") for this feature, noting that Newell, Kanoh and Harman fail to teach it. However, Delapa specifically targets the coupons to **households**, which is different from targeting a promotion to a user. Different household members might have different movie tastes, thus generating a household-targeted coupon to an individual does not insure that the coupon is appropriate for or acceptable to the individual.

Secondary Considerations of Nonobviousness – Skepticism of Experts

As noted above, skepticism of experts is listed among MPEP's secondary considerations. See MPEP §2141(III). "When evidence of any of these secondary considerations is submitted, the examiner must evaluate the evidence." See also MPEP §716.01(a). We thus point out that Brad Hackley, vice president of business development for the home video group at industry tracker Rentrak says of the DVD rental kiosk market, "practically no one saw this coming…[t]he kiosks came out of nowhere." Exhibit A, p. A10, ¶4. We submit that Mr. Hackley, as an officer of a well-known entertainment industry information management company, would be privy to the opinion of experts in the movie rental industry. We further submit that Mr. Hackley's comment about "practically nobody" anticipating the commercial success of movie rental kiosks evidences skepticism on the part of those experts.

Applicants have demonstrated reasons for patentability of dependent claims 3-7, 9-21, 23,-41, 63-68, 70 and 71. These claims are believed nonobvious at least because they depend from claim 1 or claim 63. Applicants believe that the secondary considerations presented herewith and discussed in the above Remarks (the '132 Declaration and the evidence of novelty from DeLazzer) provide ample demonstration of nonobviousness of the independent claims.

CONCLUSION

All of pending claims 1, 3-7, 9-21, 23-41, 63-68, 70 and 71 are believed allowable over the cited references. Applicants therefore respectfully solicit a Notice of Allowance for all of claims 1, 3-7, 9-21, 23-41, 63-68, 70 and 71.

Should any issues remain outstanding, the Examiner is encouraged to telephone Applicants' attorney, Curtis A. Vock, at (720) 931-3011 to schedule an interview and/or to discuss the remarks presented herein. Applicants respectfully request the Examiner's call prior to the mailing of any Office Action.

A Request for Continued Examination ("RCE") and a Petition for Three Months' Extension of Time are submitted herewith, along with authorization to charge the required RCE and Petition fees to Deposit Account No. 12-0600. This paper is also filed with a supplemental IDS citing prosecution documents from parent patent application no. 09/578,631, in order to comply with the duty of disclosure as set forth at MPEP § 2001.06 and interpreted by the Federal Circuit in McKesson Information Solutions, Inc. v. Bridge Medical, Inc., 487 F.3d 897 (Fed. Cir. 2007).

Other than the extension and RCE fees, no fees are believed due. However, if any fee is deemed necessary in connection with this Amendment and Response, please charge such fee to the aforementioned deposit account.

Respectfully submitted,

Date: 31 Oct. 2007

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DVD

In the late 1980s, several companies used MPEG 1 video compression for various five-inch video disc formats, including CD video (CDV) technology, a five-inch disc that held five minutes of MPEG 1 video and 25 minutes of digital audio, and CD-Interactive (CD-i), an interactive video disc promoted by Philips. But the road to what eventually became DVD didn't open up until the higher quality MPEG 2 compression appeared in November 1994.

By this time, parallel digital video-on-CD efforts were underway. Toshiba, in partnership with Warner Brothers and supported by Matsushita, were working on a five-inch digital video disc project called "Taz" after the Tasmanian Devil cartoon character from Warner's Looney Toons, which evolved into the Super Density (SD) digital video disc format. This effort was pushed forward primarily by Warner executive Warren Lieberfarb and Toshiba executive Koji Hase. Sony and Philips, the original developers of the CD, enlisted the help of computer industry giants such as IBM, Apple, Microsoft and Hewlett-Packard, to make sure its high-density CD or HD-CD, digital video format was PC-compatible.

In December 1994, Sony officially unveiled its digital video CD, now renamed MultiMedia Compact Disc (MMCD) format. A month later, Toshiba, supported by Matsushita and Hitachi, announced its competing SD digital video CD, along with the formation of the SD Alliance, which later evolved into the DVD Alliance, comprised of a number of manufacturers and Hollywood studios.

Both MMCD and SD used MPEG 2 compression to fit two-plus hours of digital video on a five-inch disc, but each format used differing and incompatible physical layering and modulation technology. The MMCD disc was a single 1.2mm-thick disc that could hold 3.7 gigabytes and used an enhanced version of the standard CD modulation technique. The SD disc consisted of two back-to-back bonded .6mm layers, each capable of storing five GB on each side, and used a newer modulation scheme.

With a potential digital videodisc format war looming, the two sides enlisted IBM to lead a multi-company committee called the Computer Industry Technical Working Group (TWG) to mediate a solution. Along with IBM, Apple, Microsoft and HP, other members included Compaq, Sun, Kodak and Intel. IBM executive Alan Bell chaired the group.

After several meetings with both the SD and MMCD camps throughout 1995, the TWG recommended a unification of the two formats proposed by Sony: a disc adopting the SD physical configuration along with the MMCD modulation scheme, which reduced the capacity of the disc to 4.7 GB per side.

In late August 1995, most of the TWG found itself at the regularly scheduled Optical Storage Trade Association in Maui, Hawaii. The group summoned representatives of the SD and MMCD sides to the Waikiki Sheraton in Honolulu to work out the final details of the unification. The agreement was announced at the Fall Comdex in November 1995, but it wasn't until December that the SD and MMCD camps issued press releases officially announcing the new digital video disc – now dubbed the less generic digital versatile disc (DVD) – format, along with the formation of the DVD Consortium, which later evolved into the DVD Forum.

The DVD format wasn't quite finished yet, however. The Hollywood community wanted assurances against illegal copying of movies committed to digital perfection on the new discs. A new TWG, the Copy Protection Technology Working Group (CPTWG), consisting of representatives from the motion picture, consumer electronics, recording and computer industries – was formed. While Warner's Lieberfarb and others lined up studio support for the new format, the CPTWG wrangled with technical copyright protection problems.

Finally, on October 31, 1996, the industry agreed upon the content scrambling system (CSS) copy protection technology. The first DVD decks and the first prerecorded DVD titles finally went on sale in December 1996 in Japan and in early 1997 in the U.S.

DVD was not an immediate success. The laserdisc was the format of choice for early adopters and not all Hollywood studios wanted to commit themselves to yet another new video format, especially one co-owned by a competitor. It took a few years before all the major studios adopted the DVD format, with Paramount, Fox and Disney being the final holdouts.

In September 1997, Circuit City, in partnership with the Hollywood law firm Ziffren, Brittenham, Branca and Fischer, launched a limited pay-per-view DVD format called Digital Video Express, better known as DivX. An inexpensive disc would play unfettered for 48 hours using a special DivX player connected to a phone line; buyers would then have to pay for each subsequent post-48-hour viewing. In June 1999, after universal derision from consumers, Circuit City shut DivX down after spending nearly $350 million.

Despite the DivX controversy, 1998 proved to be the breakthrough year for DVD. Approximately 23 million players were shipped and nearly 2,500 titles were available by the end of the year. In 1997, video retail giant Blockbuster began renting DVDs. In 2001, dollar sales of DVDs surpassed that of VHS. In late 2001, several DVD titles including "Shrek" earned more in DVD sales in their initial release weekend than in their initial theatrical weekends.

While progressive scan technology was known, it took two years before the first progressive scan DVD players to hit the market. It took less time for a DVD-Audio deck to be introduced, by Panasonic in late 1999.

At around the same time that DVD-Audio was being introduced, a limited number of companies demonstrated recordable DVD decks. But the handful of manufacturers making the new recordable decks could not agree on a single format. Pioneer, supported by Apple and Compaq, led an effort for the DVD-R ("dash") format, Philips and Hewlett-Packard led a DVD+R ("plus") coalition and Matsushita and Hitachi championed the DVD-RAM standard. In 2002, Matsushita and Hitachi both unveiled combination DVD-RAM/DVD-R equipment. By 2004, several manufacturers had introduced dual-format player/recorders to reduce consumer confusion over formats.

While a single recordable DVD format is still far from certain, a dispute over possible high-definition DVD recording formats is developing. In February 2002, Hitachi, LG, Matsushita, Pioneer, Philips, Samsung, Sharp, Sony and Thomson – announced a high-definition DVD recordable format called Blu-ray. Using a short-wavelength blue-violet laser instead of the red lasers used in current optical drives, new Blu-ray discs will store up to 27GB of data on a single-sided disc. The first Blu-ray decks are expected to hit store shelves in the fall of 2005.

Less than a month after the first Blu-ray announcement, the DVD Forum's steering group approved the HD-DVD recording standard, co-developed by Toshiba and NEC, and based on the current DVD red laser format and using MPEG 4 compression rather than MPEG 2. In early 2005, calls for compromise and development of a single format began to grow.

Another disc-based digital format was unveiled in 1999 – hard disk-based personal video recorders (DVR) – from two new companies, Replay and TiVo. Each company offered an onscreen programming guide and software that allowed a consumer to program favorite shows for recording by simply choosing that show from the on-screen guide, or telling the unit to record anything featuring a particular actor or a particular genre of programming. Since the machine essentially recorded everything, the viewer could pause a "live" broadcast and continue watching the show at their leisure.

Several hardware makers including Panasonic (Replay), Philips and Sony (TiVo), along with Microsoft (Ultimate TV), promptly licensed the technology to manufacture their own stand-alone hard-disk recorders and to incorporate them into a number of allied products, such as set-top boxes, satellite receivers and TVs.

In 2002, several manufacturers started selling combination DVR/DVD recordable decks, and in 2003, the first DVRs capable of recording an HDTV signal were unveiled. In the fall of 2004, combination HDTV DVR/HDTV cable set-top boxes became available from cable operators, and the first combination HDTV DVRs and Cable CARD-enabled cable receivers went on sale from mainstream hardware manufacturers.

In addition to disc-based movies, digital video took off. In early 1994, digital satellite broadcasting began, beaming signals back to rooftop satellite dishes measuring just 18-inches in diameter, about the size of a large pizza.

Within a year, thanks to the demonstrable benefits of its clear digital pictures, digital sound and a variety of programming, the new satellite systems sold more units in a shorter period of time than any other new technology. In 2000, elliptical high-definition TV dishes that received high-definition digital television (HDTV) signals from space went on sale.

But 40-year-old analog NTSC broadcast television still makes up the bulk of TV viewing and, therefore, is the weakest link in the home theater experience. The lessons of the DVD alliance between Hollywood and hardware manufacturers provided the blueprint for the next great television advance.

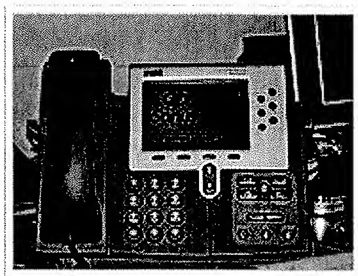
Voice over Internet Protocol

From Wikipedia, the free encyclopedia
(Redirected from VoIP)

Voice over Internet Protocol (**VoIP**) is a general term for a family of transmission technologies for delivery of voice communications over IP networks such as the Internet or other packet-switched networks. Other terms frequently encountered and synonymous with VoIP are *IP telephony*, *Internet telephony*, *voice over broadband* (VoBB), *broadband telephony*, and *broadband phone*.

Internet telephony refers to communications services — voice, facsimile, and/or voice-messaging applications — that are transported via the Internet, rather than the public switched telephone network (PSTN). The basic steps involved in originating an Internet telephone call are conversion of the analog voice signal to digital format and mompression/translation of the signal into Internet protocol (IP) packets for transmission over the Internet; the process is reversed at the receiving end.[1]

VoIP systems employ session control protocols to control the set-up and tear-down of calls as well as audio codecs which encode speech allowing transmission over an IP network as digital audio via an audio stream. Codec use is varied between different implementations of VoIP (and often a range of codecs are used); some implementations rely on narrowband and compressed speech, while others support high fidelity stereo codecs.


Cisco VoIP phone

Contents

History

- 1974 — The Institute of Electrical and Electronic Engineers (IEEE) published a paper titled "A Protocol for Packet Network Interconnection."[2]
- 1981 — IPv4 is described in RFC-791.[3]
- 1985 — The National Science Foundation commissions the creation of NSFNET.[4]
- 1995 — VocalTec releases the first commercial Internet phone software.[5][6]
- 1996 —
  - ITU-T begins the standardization of VoIP initially with the H.323 standard.[7]
  - U.S. telecommunication companies ask the U.S. Congress to ban Internet phone technology.[8]
- 1997 — Level 3 began development of its first softswitch (a term they coined in 1998).[9]
- 1999 —
  - The Session Initiation Protocol (SIP) specification RFC 2543 was released.[10]
  - The first open source SIP PBX (Asterisk) is created by Mark Spencer of Digium.[11]
- 2004 — Commercial VoIP service providers proliferate.[12]
- 2005 — Start of OpenSER (aka Kamailio or OpenSIPS).
- 2006 — Start of FreeSWITCH.

VoIP technologies and implementations

Voice over IP has been implemented in various ways using both proprietary and open protocols and standards. Examples of technologies used to implement Voice over Internet Protocol include:

- H.323
- IMS
- SIP
- RTP

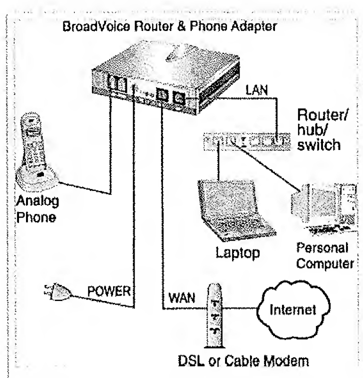
A notable proprietary implementation is the Skype network. Other examples of specific implementations and a comparison between them are available in Comparison of VoIP software.

Adoption

Consumer market

A major development starting in 2004[12] has been the introduction of mass-market VoIP services over broadband Internet access services, in which subscribers make and receive calls as they would over the PSTN. Full phone service VoIP phone companies provide inbound and outbound calling with Direct Inbound Dialing. Many offer unlimited domestic calling, and some to other countries as well, for a flat monthly fee as well as free calling between subscribers using the same provider.[13] These services have a wide variety of features which can be more or less similar to traditional POTS.

There are three common methods of connecting to VoIP service providers:



Example of VoIP adapter setup in residential network

- An Analog Telephone Adapter (ATA) may be connected between an IP network (such as a broadband connection) and an existing telephone jack in order to provide service nearly indistinguishable from PSTN providers on all the other telephone jacks in the residence. This type of service, which is fixed to one location, is generally offered by broadband Internet providers such as cable companies and telephone companies as a cheaper flat-rate traditional phone service.
- Dedicated VoIP phones are phones that allow VoIP calls without the use of a computer. Instead they connect directly to the IP network (using technologies such as Wi-Fi or Ethernet). In order to connect to the PSTN they usually require service from a VoIP service provider; most people therefore will use them in conjunction with a paid service plan.
- A softphone (also known as an Internet phone or Digital phone) is a piece of software that can be installed on a computer that allows VoIP calling without dedicated hardware.

PSTN and mobile network providers

It is becoming increasingly common for telecommunications providers to use VoIP telephony over dedicated and public IP networks to connect switching stations and to interconnect with other telephony network providers; this is often referred to as "IP backhaul".[14][15]

Many telecommunications companies are looking at the IP Multimedia Subsystem (IMS) which will merge Internet technologies with the mobile world, using a pure VoIP infrastructure. It will enable them to upgrade their existing systems while embracing Internet technologies such as the Web, email, instant messaging, presence, and video conferencing. It will also allow existing VoIP systems to interface with the conventional PSTN and mobile phone networks.

"Dual mode" telephone sets, which allow for the seamless handover between a cellular network and a Wi-Fi network, are expected to help VoIP become more popular.[16]

Phones such as the NEC N900iL, many of the Nokia Eseries and several other Wi-Fi enabled mobile phones have SIP clients built into the firmware. Such clients operate independently of the mobile phone network (however some operators choose to remove the client from subsidised handsets). Some operators such as Vodafone actively try to block VoIP traffic from their network.[17] Others, like T-Mobile, have refused to interconnect with VoIP-enabled networks as was seen in the legal case between T-Mobile and Truphone, which ultimately was settled in the UK High Court in favour of the VoIP carrier.[18]

Corporate use

Because of the bandwidth efficiency and low costs that VoIP technology can provide, businesses are gradually beginning to migrate from traditional copper-wire telephone systems to VoIP systems to reduce their monthly phone costs.[19]

VoIP solutions aimed at businesses have evolved into "unified communications" services that treat all communications—phone calls, faxes, voice mail, e-mail, Web conferences and more—as discrete units that can all be delivered via any means and to any handset, including cellphones. Two kinds of competitors are competing in this space: one set is focused on VoIP for medium to large enterprises, while another is targeting the small-to-medium business (SMB) market.[20]

VoIP runs both voice and data communications over a single network, which can significantly reduce infrastructure costs.[21]

The prices of extensions on VoIP are lower than for PBXs and key systems. VoIP switches run on commodity hardware, such as PCs or Linux systems, so they are easy to configure and troubleshoot. Rather than closed architectures, these devices rely on standard interfaces.[21]

VoIP devices have simple, intuitive user interfaces, so users can often make simple system configuration changes. Dual-mode cellphones enable users to continue their conversations as they move between an outside cellular service

and an internal Wi-Fi network, so that it is no longer necessary to carry both a desktop phone and a cellphone. Maintenance becomes simpler as there are fewer devices to oversee.[21]

Skype, which originally marketed itself as a service among friends, has begun to cater to businesses, providing free-of-charge connection between any users on the Skype network and connecting to and from ordinary PSTN telephones for a charge.[22]

In the United States the Social Security Administration (SSA) is converting its field offices of 63,000 workers from traditional phone installations to a VoIP infrastructure carried over its existing data network.[23][24]

Benefits

Operational cost

VoIP can be a benefit for reducing communication and infrastructure costs. Examples include:

- Routing phone calls over existing data networks to avoid the need for separate voice and data networks.[25]
- Conference calling, IVR, call forwarding, automatic redial, and caller ID features that traditional telecommunication companies (telcos) normally charge extra for are available free of charge from open source VoIP implementations such as Asterisk or FreeSWITCH.
- Costs are lower, mainly because of the way Internet access is billed compared to regular telephone calls. While regular telephone calls are billed by the minute or second, VoIP calls are billed per megabyte (MB). In other words, VoIP calls are billed per amount of *information* (data) sent over the *Internet* and not according to the *time* connected to the telephone network. In practice the amount charged for the data transferred in a given period is far less than that charged for the amount of time connected on a regular telephone line.

Flexibility

VoIP can facilitate tasks and provide services that may be more difficult to implement using the PSTN. Examples include:

- The ability to transmit more than one telephone call over a single broadband connection.[26] without the need to add extra lines
- Secure calls using standardized protocols (such as Secure Real-time Transport Protocol.) Most of the difficulties of creating a secure telephone connection over traditional phone lines, such as digitizing and digital transmission, are already in place with VoIP. It is only necessary to encrypt and authenticate the existing data stream.[27]
- Location independence. Only a sufficiently fast and stable Internet connection is needed to get a connection from anywhere to a VoIP provider.
- Integration with other services available over the Internet, including video conversation, message or data file exchange during the conversation, audio conferencing, managing address books, and passing information about whether other people are available to interested parties.

Challenges

Quality of Service

Because the underlying IP network is inherently unreliable, in contrast to the circuit-switched public telephone network, and does not inherently provide a mechanism to ensure that data packets are delivered in sequential order, or provide Quality of Service (QoS) guarantees, VoIP implementations face problems mitigating latency and jitter.

Voice, and all other data, travel in packets over IP networks with fixed maximum capacity.This system is more prone to congestion and DoS attacks[28] than traditional circuit switched systems; a circuit switched system of insufficient capacity will refuse new connections while carrying the remainder without impairment, while the quality of real-time

data such as telephone conversations on packet-switched networks degrades dramatically.

Fixed delays cannot be controlled (as they are caused by the physical distance the packets travel), however some delays can be minimized by marking voice packets as being delay-sensitive (see, for example, DiffServ). Fixed delays are especially problematic when satellite circuits are involved, due to long round-trip propagation delay (400–600 milliseconds for links through geostationary satellites).

A cause of packet loss and delay is congestion, which can be avoided by means of teletraffic engineering.

The receiving node must restructure IP packets that may be out of order, delayed or missing, while ensuring that the audio stream maintains a proper time consistency. Variation in delay is called jitter. The effects of jitter can be mitigated by storing voice packets in a jitter buffer upon arrival and before producing analog audio, although this further increases delay. This avoids a condition known as buffer underrun, in which the voice engine is missing audio since the next voice packet has not yet arrived. When IP packets are lost or delayed at any point in the network between VoIP users there will be a momentary dropout of voice if all packet delay and loss mechanisms cannot compensate.

It has been suggested to rely on the packetized nature of media in VoIP communications and transmit the stream of packets from the source phone to the destination phone simultaneously across different routes (multi-path routing).[29] In such a way, temporary failures have less impact on the communication quality. In capillary routing it has been suggested to use at the packet level Fountain codes or particularly raptor codes for transmitting extra redundant packets making the communication more reliable.

A number of protocols have been defined to support the reporting of QoS/QoE for VoIP calls. These include RTCP XR (RFC3611), SIP RTCP Summary Reports, H.460.9 Annex B (for H.323), H.248.30 and MGCP extensions. The RFC3611 VoIP Metrics block is generated by an IP phone or gateway during a live call and contains information on packet loss rate, packet discard rate (due to jitter), packet loss/discard burst metrics (burst length/density, gap length/density), network delay, end system delay, signal / noise / echo level, MOS scores and R factors and configuration information related to the jitter buffer.

RFC3611 VoIP metrics reports are exchanged between IP endpoints on an occasional basis during a call, and an end of call message sent via SIP RTCP Summary Report or one of the other signaling protocol extensions. RFC3611 VoIP metrics reports are intended to support real time feedback related to QoS problems, the exchange of information between the endpoints for improved call quality calculation and a variety of other applications.

Layer-2 Quality of Service

A number of protocols that deal with Data link layer and Physical Layer include Quality of Service mechanisms that can be used to ensure that applications like VoIP work well even in congested scenarios. Some examples include:

- IEEE 802.11e is an approved amendment to the IEEE 802.11 standard that defines a set of Quality of Service enhancements for wireless LAN applications through modifications to the Media Access Control (MAC) layer. The standard is considered of critical importance for delay-sensitive applications, such as Voice over Wireless IP.
- The ITU-T G.hn standard, which provides a way to create a high-speed (up to 1 Gigabit/s) Local area network using existing home wiring (power lines, phone lines and coaxial cables). G.hn provides QoS by means of "Contention-Free Transmission Opportunities" (CFTXOPs) which are allocated to flows (such as a VoIP call) which require QoS and which have negotiated a "contract" with the network controller.

Susceptibility to power failure

Telephones for traditional residential analog service are usually connected directly to telephone company phone lines which provide direct current to power most basic analog handsets independently of locally available power.

IP Phones and VoIP telephone adapters connect to routers or cable modems which typically depend on the availability of mains electricity or locally generated power.[30] Some VoIP service providers use customer premise equipment (e.g., cablemodems) with battery-backed power supplies to assure uninterrupted service for up to several hours in case of local power failures. Such battery-backed devices typically are designed for use with analog handsets.

The susceptibility of phone service to power failures is a common problem even with traditional analog service in areas where many customers purchase modern handset units that operate wirelessly to a base station, or that have other modern phone features, such as built-in voicemail or phone book features.

Emergency calls

The nature of IP makes it difficult to locate network users geographically. Emergency calls, therefore, cannot easily be routed to a nearby call center. Sometimes, VoIP systems may route emergency calls to a non-emergency phone line at the intended department. In the United States, at least one major police department has strongly objected to this practice as potentially endangering the public.[31]

A fixed line phone has a direct relationship between a telephone number and a physical location. A telephone number represents one pair of wires that links a location to the telephone company's exchange. Once a line is connected, the telephone company stores the home address that relates to the wires, and this relationship will rarely change. If an emergency call comes from that number, then the physical location is known.

In the IP world it is not so simple. A broadband provider may know the location where the wires terminate, but this does not necessarily allow the mapping of an IP address to that location. IP addresses are often dynamically assigned, so the ISP may allocate an address for online access, or at the time a broadband router is engaged. The ISP recognizes individual IP addresses, but does not necessarily know what physical location to which it corresponds. The broadband service provider knows the physical location, but is not necessarily tracking the IP addresses in use.

There are more complications, since IP allows a great deal of mobility. For example, a broadband connection can be used to dial a virtual private network that is employer-owned. When this is done, the IP address being used will belong to the range of the employer, rather than the address of the ISP, so this could be many kilometres away or even in another country. To provide another example: if mobile data is used, *e.g.*, a 3G mobile handset or USB wireless broadband adapter, then the IP address has no relationship with any physical location, since a mobile user could be anywhere that there is network coverage, even roaming via another cellular company.

In short, there is no relationship between IP address and physical location, so the address itself reveals no useful information for the emergency services.

At the VoIP level, a phone or gateway may identify itself with a SIP registrar by using a username and password. So in this case, the Internet Telephony Service Provider (ITSP) knows that a particular user is online, and can relate a specific telephone number to the user. However, it does not recognize how that IP traffic was engaged. Since the IP address itself does not necessarily provide location information presently, today a "best efforts" approach is to use an available database to find that user and the physical address the user chose to associate with that telephone number—clearly an imperfect solution.

VoIP Enhanced 911 (E911) is another method by which VoIP providers in the United States are able to support emergency services. The VoIP E911 emergency-calling system associates a physical address with the calling party's telephone number as required by the Wireless Communications and Public Safety Act of 1999. All "interconnected" VoIP providers (those that provide access to the PSTN system) are required to have E911 available to their customers.[32] VoIP E911 service generally adds an additional monthly fee to the subscriber's service per line, similar to analog phone service. Participation in E911 is not required and customers can opt-out or disable E911 service on their VoIP lines, if desired. VoIP E911 has been successfully used by many VoIP providers to provide physical address information to emergency service operators.

One shortcoming of VoIP E911 is that the emergency system is based on a static table lookup. Unlike in cellular phones, where the location of an E911 call can be traced using Assisted GPS or other methods, the VoIP E911 information is only accurate so long as subscribers are diligent in keeping their emergency address information up-to-date. In the United States, the Wireless Communications and Public Safety Act of 1999 leaves the burden of responsibility upon the subscribers and not the service providers to keep their emergency information up to date.

Lack of redundancy

With the current separation of the Internet and the PSTN, a certain amount of redundancy is provided. An Internet outage does not necessarily mean that a voice communication outage will occur simultaneously, allowing individuals to call for emergency services and many businesses to continue to operate normally. In situations where telephone services become completely reliant on the Internet infrastructure, a single-point failure can isolate communities from all communication, including Enhanced 911 and equivalent services in other locales.[33]

Number portability

Local number portability (LNP) and Mobile number portability (MNP) also impact VoIP business. In November 2007, the Federal Communications Commission in the United States released an order extending number portability obligations to interconnected VoIP providers and carriers that support VoIP providers.[34] Number portability is a service that allows a subscriber to select a new telephone carrier without requiring a new number to be issued. Typically, it is the responsibility of the former carrier to "map" the old number to the undisclosed number assigned by the new carrier. This is achieved by maintaining a database of numbers. A dialed number is initially received by the original carrier and quickly rerouted to the new carrier. Multiple porting references must be maintained even if the subscriber returns to the original carrier. The FCC mandates carrier compliance with these consumer-protection stipulations.

A voice call originating in the VoIP environment also faces challenges to reach its destination if the number is routed to a mobile phone number on a traditional mobile carrier. VoIP has been identified in the past as a Least Cost Routing (LCR) system, which is based on checking the destination of each telephone call as it is made, and then sending the call via the network that will cost the customer the least.[35] This rating is subject to some debate given the complexity of call routing created by number portability. With GSM number portability now in place, LCR providers can no longer rely on using the network root prefix to determine how to route a call. Instead, they must now determine the actual network of every number before routing the call.

Therefore, VoIP solutions also need to handle MNP when routing a voice call. In countries without a central database, like the UK, it might be necessary to query the GSM network about which home network a mobile phone number belongs to. As the popularity of VoIP increases in the enterprise markets because of least cost routing options, it needs to provide a certain level of reliability when handling calls.

MNP checks are important to assure that this quality of service is met. By handling MNP lookups before routing a call and by assuring that the voice call will actually work, VoIP service providers are able to offer business subscribers the level of reliability they require.

In countries such as Singapore, the most recent Mobile number portability solution is expected to open the doors to new business opportunities for non-traditional telecommunication service providers like wireless broadband providers and voice over IP (VoIP) providers..

PSTN integration

E.164 is a global numbering standard for both the PSTN and PLMN. Most VoIP implementations support E.164 to allow calls to be routed to and from VoIP subscribers and the PSTN/PLMN.[36] VoIP implementations can also allow other identification techniques to be used. For example, Skype allows subscribers to choose "Skype names"[37] (usernames) whereas SIP implementations can use URIs[38] similar to email addresses. Often VoIP implementations employ methods of translating non-E.164 identifiers to E.164 numbers and vice-versa, such as the Skype-In service provided by Skype[39] and the ENUM service in IMS and SIP.[40]

Echo can also be an issue for PSTN integration[41] . Common causes of echo include impedance mismatches in analog circuitry and acoustic coupling of the transmit and receive signal at the receiving end.

Security

Voice over Internet Protocol telephone systems (VoIP) are susceptible to attacks as are any internet-connected devices. This means that hackers who know about these vulnerabilities can institute denial-of-service attacks, harvest customer data, record conversations and break into voice mailboxes.[42]

Another challenge is routing VoIP traffic through firewalls and network address translators. Private Session Border Controllers are used along with firewalls to enable VoIP calls to and from protected networks. Skype uses a proprietary protocol to route calls through other Skype peers on the network, allowing it to traverse symmetric NATs and firewalls. Other methods to traverse NATs involve using protocols such as STUN or ICE.

Many consumer VoIP solutions do not support encryption, although having a secure phone is much easier to implement with VoIP than traditional phone lines. As a result, it is relatively easy to eavesdrop on VoIP calls and even change their content.[43] An attacker with a packet sniffer could intercept your VoIP calls if you are not on a secure VLAN.

There are open source solutions, such as Wireshark, that facilitate sniffing of VoIP conversations. A modicum of security is afforded by patented audio codecs in proprietary implementations that are not easily available for open source applications, however such security through obscurity has not proven effective in other fields. Some vendors also use compression to make eavesdropping more difficult. However, real security requires encryption and cryptographic authentication which are not widely supported at a consumer level. The existing security standard Secure Real-time Transport Protocol (SRTP) and the new ZRTP protocol are available on Analog Telephone Adapters(ATAs) as well as various softphones. It is possible to use IPsec to secure P2P VoIP by using opportunistic encryption. Skype does not use SRTP, but uses encryption which is transparent to the Skype provider. In 2005, Skype invited a researcher, Dr Tom Berson, to assess the security of the Skype software, and his conclusions are available in a published report.[44]

The Voice VPN solution provides secure voice for enterprise VoIP networks by applying IPSec encryption to the digitized voice stream.

Securing VoIP

To prevent the above security concerns the government and military organizations are using; Voice over Secure IP (VoSIP), Secure Voice over IP (SVoIP), and Secure Voice over Secure IP (SVoSIP) to protect confidential, and/or classified VoIP communications.[45] Voice over Secure IP is accomplished when VoIP is transferred over a classified network, like the SIPRNet. Secure Voice over IP is accomplished by encrypting VoIP with Type 1 encryption. Secure Voice over Secure IP is accomplished by using Type 1 encryption on a classified network, like SIPRNet.[46][47][48][49][50] Public Secure VoIP is also available with free GNU programs.[51]

Caller ID

Caller ID support among VoIP providers varies, although the majority of VoIP providers now offer full Caller ID with name on outgoing calls.

In a few cases, VoIP providers may allow a caller to spoof the Caller ID information, potentially making calls appear as though they are from a number that does not belong to the caller[52] Business grade VoIP equipment and software often makes it easy to modify caller ID information. Although this can provide many businesses great flexibility, it is also open to abuse.

The "Truth in Caller ID Act" has been in preparation in the U.S. Congress since 2006, but as of January 2009 still has not been enacted. This bill proposes to make it a crime in the United States to "knowingly transmit misleading or inaccurate caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value ..."[53]

Interconnection to traditional PSTN telephones

Some analog telephone adapters do not decode pulse dialing from older phones. The VoIP user may use a pulse-to-tone

converter, if needed.

Fax handling

Support for sending faxes over VoIP implementations is still limited. The existing voice codecs are not designed for fax transmission; they are designed to digitize an analog representation of a human voice efficiently. However, the inefficiency of digitizing an analog representation (modem signal) of a digital representation (a document image) of analog data (an original document) more than negates any bandwidth advantage of VoIP. In other words, the fax "sounds" simply don't fit in the VoIP channel. An alternative IP-based solution for delivering fax-over-IP called T.38 is available.

The T.38 protocol is designed to work like a traditional fax machine and can work using several configurations. The fax machine could be a traditional fax machine connected to the PSTN, or an ATA box (or similar). It could be a fax machine with an RJ-45 connector plugged straight into an IP network, or it could be a computer pretending to be a fax machine. [54] Originally, T.38 was designed to use UDP and TCP transmission methods across an IP network. The main difference between using UDP and TCP methods for a FAX is the real time streaming attributes. TCP is better suited for use between two IP devices. However, older fax machines, connected to an analog system, benefit from UDP near real-time characteristics.

There have been updated versions of T.30 to resolve the fax over IP issues, which is the core fax protocol. Some new fax machines have T.38 built-in capabilities which allow the user to plug right into the network with minimal configuration changes. A unique feature of T.38 is that each packet contains a copy of the main data in the previous packet. This is an option and most implementations seem to support it. This forward error correction scheme makes T.38 far more tolerant of dropped packets than VoIP. With T.38, two successive lost packets are needed to actually lose any data. The data you lose will only be a small piece, but with the right settings and error correction mode, there is a high probability that you will receive the whole transmission.

Tweaking the settings on the T.30 and T.38 protocols could also turn your unreliable fax into a robust machine. Some fax machines pause at the end of a line to allow the paper feed to catch up. This is good news for packets that were lost or delayed because it gives them a chance to catch up. However, were this to happen on every line, your fax transmittal would take a long time. Another possible solution is to treat the fax system as a message switching system, which does not need a real-time data transmission (such as sending a fax as an email attachment (see Fax) or remote printout (see Internet Printing Protocol)). The end system can completely buffer the incoming fax data before displaying or printing the fax image.

Support for other telephony devices

Another challenge for VoIP implementations is the proper handling of outgoing calls from other telephony devices such as DVR boxes, satellite television receivers, alarm systems, conventional modems and other similar devices that depend on access to a PSTN telephone line for some or all of their functionality.

These types of calls sometimes complete without any problems, but in other cases they fail. If VoIP and cellular substitution becomes very popular, some ancillary equipment makers may be forced to redesign equipment, because it would no longer be possible to assume a conventional PSTN telephone line would be available in consumer's homes.

Legal issues

As the popularity of VoIP grows, and PSTN users switch to VoIP in increasing numbers, governments are becoming more interested in regulating VoIP in a manner similar to PSTN services,[55] especially with the encouragement of the state-mandated telephone monopolies/oligopolies in a given country, who see this as a way to stifle the new competition.

Another legal issue that the U.S. Congress is debating concerns changes to the Foreign Intelligence Surveillance Act. The issue in question is calls between Americans and foreigners. The National Security Agency (NSA) isn't authorized to tap Americans' conversations without a warrant—but the Internet, and specifically voice over Internet protocol, or

VoIP, doesn't draw as clear a line to the location of a caller or a call's recipient as the traditional phone system does.[56] As VoIP's low cost and flexibility convinces more and more organizations to adopt the technology, the line separating the NSA's ability to snoop on phone calls will only get blurrier.[57] VoIP technology has also increased security concerns because VoIP and similar technologies have made it more difficult for the government to determine where a target is physically located when communications are being intercepted, and that creates a whole set of new legal challenges.[58]

In the U.S., the Federal Communications Commission now requires all interconnected VoIP service providers to comply with requirements comparable to those for traditional telecommunications service providers. VoIP operators in the U.S. are required to support local number portability; make service accessible to people with disabilities; pay regulatory fees, universal service contributions, and other mandated payments; and enable law enforcement authorities to conduct surveillance pursuant to the Communications Assistance for Law Enforcement Act (CALEA). "Interconnected" VoIP operators also must provide Enhanced 911 service, disclose any limitations on their E-911 functionality to their consumers, and obtain affirmative acknowledgements of these disclosures from all consumers.[59] VoIP operators also receive the benefit of certain U.S. telecommunications regulations, including an entitlement to interconnection and exchange of traffic with incumbent local exchange carriers via wholesale carriers. Providers of "nomadic" VoIP service — those who are unable to determine the location of their users — are exempt from state telecommunications regulation.[60]

Throughout the developing world, countries where regulation is weak or captured by the dominant operator, restrictions on the use of VoIP are imposed, including in Panama where VoIP is taxed, Guyana where VoIP is prohibited and India where its retail commercial sales is allowed but only for long distance service.[61] In Ethiopia, where the government is monopolizing telecommunication service, it is a criminal offense to offer services using VoIP. The country has installed firewalls to prevent international calls being made using VoIP. These measures were taken after a popularity in VoIP reduced the income generated by the state owned telecommunication company.

In the European Union, the treatment of VoIP service providers is a decision for each Member State's national telecoms regulator, which must use competition law to define relevant national markets and then determine whether any service provider on those national markets has "significant market power" (and so should be subject to certain obligations). A general distinction is usually made between VoIP services that function over managed networks (via broadband connections) and VoIP services that function over unmanaged networks (essentially, the Internet).

VoIP services that function over managed networks are often considered to be a viable substitute for PSTN telephone services (despite the problems of power outages and lack of geographical information); as a result, major operators that provide these services (in practice, incumbent operators) may find themselves bound by obligations of price control or accounting separation.

VoIP services that function over unmanaged networks are often considered to be too poor in quality to be a viable substitute for PSTN services; as a result, they may be provided without any specific obligations, even if a service provider has "significant market power".

The relevant EU Directive is not clearly drafted concerning obligations which can exist independently of market power (e.g., the obligation to offer access to emergency calls), and it is impossible to say definitively whether VoIP service providers of either type are bound by them. A review of the EU Directive is under way and should be complete by 2007.

In India, it is legal to use VoIP, but it is illegal to have VoIP gateways inside India. This effectively means that people who have PCs can use them to make a VoIP call to any number, but if the remote side is a normal phone, the gateway that converts the VoIP call to a POTS call should not be inside India.

In the UAE, it is illegal to use any form of VoIP, to the extent that Web sites of Skype and Gizmo Project are blocked.

In the Republic of Korea, only providers registered with the government are authorized to offer VoIP services. Unlike many VoIP providers, most of whom offer flat rates, Korean VoIP services are generally metered and charged at rates similar to terrestrial calling. Foreign VoIP providers such as Vonage encounter high barriers to government registration. This issue came to a head in 2006 when Internet service providers providing personal Internet services by contract to

United States Forces Korea members residing on USFK bases threatened to block off access to VoIP services used by USFK members of as an economical way to keep in contact with their families in the United States, on the grounds that the service members' VoIP providers were not registered. A compromise was reached between USFK and Korean telecommunications officials in January 2007, wherein USFK service members arriving in Korea before June 1, 2007 and subscribing to the ISP services provided on base may continue to use their U.S.-based VoIP subscription, but later arrivals must use a Korean-based VoIP provider, which by contract will offer pricing similar to the flat rates offered by U.S. VoIP providers.[62]

International VoIP implementation

IP telephony in Japan

In Japan, **IP telephony** (IP電話 *IP Denwa*) is regarded as a service applied by VoIP technology to the whole or a part of the telephone line. As of 2003, IP telephony services have been assigned telephone numbers. IP telephony services also often include videophone/video conferencing services. According to the Telecommunication Business Law, the service category for IP telephony also implies the service provided via Internet, which is not assigned any telephone number.

IP telephony is basically regulated by Ministry of Internal Affairs and Communications (MIC) as a telecommunication service. The operators have to disclose necessary information on its quality, etc., prior to making contracts with customers, and have an obligation to respond to their complaints cordially.

Many Japanese Internet service providers (ISP) are including IP telephony services. An ISP who also provides IP telephony service is known as a "ITSP (Internet Telephony Service Provider)". Recently, the competition among ITSPs has been activated, by option or set sales, in connection with ADSL or FTTH services.

The tariff system normally applied to Japanese IP telephony is described below;

- A call between IP telephony subscribers, limited to the same group, is usually free of charge.
- A call from IP telephony subscribers to a fixed line or PHS is usually a uniformly fixed rate all over the country.

Between ITSPs, the interconnection is mostly maintained at VoIP level.

- Where the IP telephony is assigned normal telephone number (0AB-J), the condition for its interconnection is considered same as normal telephony.
- Where the IP telephony is assigned specific telephone number (050), the condition for its interconnection is described below;
  - Interconnection is sometimes charged. (Sometimes, it is free of charge.) In case of free-of-charge, mostly, communication traffic is exchanged via a P2P connection with the same VoIP standard. Otherwise, certain conversions are needed at the point of the VoIP gateway which incurs operating costs.

Since September 2002, the MIC has assigned IP telephony telephone numbers on the condition that the service falls into certain required categories of quality.

High-quality IP telephony is assigned a telephone number, normally starting with the digits 050. When VoIP quality is so high that a customer has difficulty telling the difference between it and a normal telephone, and when the provider relates its number with a location and provides the connection with emergency call capabilities, the provider is allowed to assign a normal telephone number, which is a so-called "0AB-J" number.

See also

- BabyTEL
- Capillary routing
- Click to talk
- Communications Assistance For Law Enforcement Act

- Comparison of VoIP software
- Computer conferencing
- Differentiated services
- ENUM
- H.323
- Harvard sentences
- Integrated services
- Internet fax
- IP Multimedia Subsystem
- IP Phone
- Mobile VoIP
- Mouth-to-ear delay
- Publicly Available Telephone Services
- Predictive dialers
- RTP audio video profile
- Secure telephone
- Session Initiation Protocol (SIP)
- TestYourVoIP
- Voice Router
- Voice VPN
- VoiceXML
- VoIP recording
- IP Endpoints

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See also

- IP Endpoints

External links

- Voice over Internet Protocol at the Open Directory Project

Retrieved from "http://en.wikipedia.org/wiki/Voice_over_Internet_Protocol"
Categories: VoIP terminology & concepts | Broadband | Voice over IP | Telecommunications terms
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Redbox

From Wikipedia, the free encyclopedia

Redbox (written as **redbox** on signage) is a subsidiary of Coinstar that specializes in the vending of DVDs via self-service/interactive kiosks.

The kiosks are located across the United States, typically in McDonald's outlets (where it began) and other retail, pharmacy, grocery, and convenience store locations.

Entertainment Merchants Association ranked the company as the fifth largest DVD rental company in the United States.[1]

Redbox Automated Retail, LLC

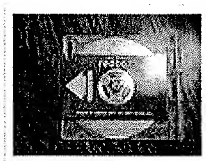
Type	Subsidiary of Coinstar
Founded	2003
Headquarters	Oakbrook Terrace, Illinois
Key people	Gregg Kaplan, CEO Mitch Lowe, COO John Harvey, CFO
Industry	Retail/DVD rental
Website	http://www.redbox.com/

Contents

Kiosk design and operation

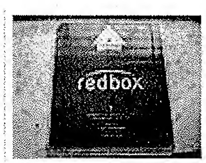
A Redbox kiosk in front of Walgreens in Streator, IL.

Redbox began in 2002 using re-branded kiosks manufactured and operated by Silicon Valley-based DVDPlay at 140 McDonald's restaurants in their Denver test market.[1] The first DVD rental kiosks in the Washington DC accompanied the company's unsuccessful attempt at automated convenience store kiosks.[1] In May 2005, Redbox phased out the DVDPlay-manufactured machines and contracted Solectron — a subsidiary of Flextronics, which also manufactures the Zune, Xbox and Xbox 360 — to create and manufacture a custom kiosk design.[2]


A Redbox barcoded DVD tray, delivered by and returned to the kiosk.

The company's typical self-service vending kiosk combines an interactive touch screen and sign, a robotic disk array system[3] and web-linked electronic communications. Kiosks hold more than 600 DVDs with 70-200 titles, updated weekly.[3] DVDs can be returned the next day to any of the company's kiosks; charges accrue up to 25 days, after which the customer then owns the DVD (without the original case) and pays $25.00 plus tax. Customers can also reserve DVDs online, made possible by real-time inventory updates on the company's website.[4] Customers can buy used dvds from the kiosks for $7 — with unsold used dvds returned to their suppliers.

Corporate history



Newer Redbox casing, August 2009.

Redbox Automated Retail LLC was initially funded by McDonald's Ventures, LLC, a wholly owned subsidiary of McDonald's Corp., in which McDonald's owned 47 percent of the company with another 47 percent of redbox owned by Coinstar.[4] In February 2009, Redbox was purchased for $175 million by Coinstar.[5][6]

The company passed Blockbuster Inc. in 2007 in number of U.S. locations[7] and passed 100

million rentals in February 2008.[8] As of April 2007, each kiosk averaged 49.1 rentals per day and US$37,457 a year in revenue.[1] Competitors include The New Release, DVDXpress, and DVDplay.

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[1]

See Also

- Official website
- Online DVD rental
- Video store

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Categories: Video rental services | Companies based in DuPage County, Illinois

RELATED PROCEEDINGS APPENDIX TO APPEAL BRIEF

An appeal brief was filed April 18, 2008 in related U.S. Application Serial No. 09/578,631, which is a parent of the present Application. A Notice of Non-Compliant Appeal Brief was mailed April 25, 2008, to which a Reply, including a replacement "Status of the Claims" section was filed on May 22, 2008. A Notice of Allowance was issued on August 8, 2008 (without any intervening Examiner's Answer), and U.S. Serial No. 09/578,631 issued as U.S. Patent No. 7,444,296 on October 28, 2008. Some of the same issues appealed above were appealed in the parent case. Appellants are unaware of any other related proceedings as identified in 37 C.F.R. 41.37, subsections (c)(1)(ii) or (c)(1)(x).